

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 July 23, 2020

17 2:07 PM

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20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JUSTIN WALKER

1 HEARING re Notice of Agenda I Agenda for July 23, 2020

2 Hearing [telephonic]

3

4 HEARING re Motion to Extend Exclusivity Period for Filing a

5 Chapter 11 Plan and Disclosure Statement Motion of Debtors

6 for Entry of a Second Order Extending the Exclusive

7 Periods within which to File a Chapter 11 Plan and Solicit

8 Acceptances Thereof (ECF #1365)

9

10 HEARING re Public Claimants' Statement in Support of the

11 Motion of the Debtors for Entry of a Second Order Extending

12 the Exclusive Periods Within Which to File a Chapter 11 Plan

13 and Solicit Acceptances Thereof (related document(s) 1365)

14 filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee

15 of Governmental and Other Contingent Litigation Claimants

16 (ECF # 1471)

17

18 HEARING re Statement of the Raymond Sackler Family in

19 Respect of The Debtors' Second Exclusivity Motion (related

20 document(s) 1365) filed by Gerard Uzzi on behalf of The

21 Raymond Sackler Family (ECF # 1499)

22

23 HEARING re Motion to Approve /Motion of Debtors for Entry of

24 an Order (I) Approving the Dismissal Agreement By and Among

25 the Debtors and Intellipharmaeutics and (II)

1 Granting Related Relief (ECF # 1327)

2

3 HEARING re Motion to Authorize /Motion of the Official
4 Committee of Unsecured Creditors for Entry of an Order
5 Clarifying the Debtors Obligations With Regard to Political
6 Contributions (ECF # 1373)

7

8 HEARING re Motion to Shorten Time (related to ECF #1373)
9 (ECF #1372)

10

11 HEARING re Notice of Presentment of Stipulation and Order
12 Permitting the Filing of a Class of Proof of Claim Solely
13 for Administrative Convenience in order to Effectuate
14 Potential Settlement in Respect of Certain Canadian
15 Litigation filed by James I. McClammy on behalf of Purdue
16 Pharma L.P. (ECF # 1313)

17

18 HEARING re Objection of Her Majesty the Queen in Right of
19 the Province of British Columbia to Notice of Presentment of
20 Stipulation and Order Permitting the Filing of a Class Proof
21 of Claim Solely for Administrative Convenience in Order to
22 Effectuate a Potential Settlement in Respect of Certain
23 Canadian Litigation [Related Document # 1313] filed
24 by Nickolas Karavolas on behalf of Her Majesty in Right of
25 the Province of British Columbia (ECF# 1369)

1 HEARING re Notice of Filing of Amended and Restated
2 Stipulation and [Proposed] Order Permitting the Filing of a
3 Class Proof of Claim Solely for Administrative Convenience
4 in Order to Effectuate a Potential Settlement in Respect of
5 Certain Canadian Patient Litigation (related
6 document(s)1313) Filed by James I. McClammy on behalf of
7 Purdue Pharma L.P. (ECF # 1498)

8
9 HEARING re Motion to Shorten the Notice Period with Respect
10 to Motion to Permit the Filing of a Class Proof of Claim
11 (related document(s) 1408) filed by Peter D'Apice on behalf
12 of Tiffany Dunford (ECF # 1409)

13
14 HEARING re Debtors' Objection to Motion to Shorten the
15 Notice Period with Respect to the Motion to Permit the
16 Filing of a Class Proof of Claim (related document(s) 1409)
17 filed by James I. McClammy on behalf of Purdue Pharma L.P.
18 (ECF # 1432)

19
20 HEARING re Public Claimants' Joinder to Debtors' Objection
21 to Tiffany Dunford's Motion to Shorten the Notice Period
22 with Respect to the Motion to Permit the Filing of a Class
23 Proof of Claim (related document(s)1432, 1409) filed by
24 Kenneth H. Eckstein on behalf of Ad Hoc Committee of
25 Governmental and Other Contingent Litigation Claimants

1 (ECF #1448)

2
3 HEARING re Motion by Public Schools Districts for an Order
4 Allowing them to Proceed with a Class Proof of Claim and
5 Certifying a Class - other school districts filed by Matthew
6 J. Piers on behalf of Board of Education of East Aurora
7 School District 131, Board of Education of Thornton
8 Fractional Township High School District 215, Board of
9 Education of Thornton Township High School District 205

10 (ECF #1211)

11
12 HEARING re Omnibus Objection to Motion for the Request by
13 the Hospital Claimants, the Private Insurance Class
14 Plaintiffs, the Independent Public School Districts, the NAS
15 Guardians, and the Cheyenne and Arapaho Tribes for Leave to
16 File Motions for Class Relief (related document(s)1321,
17 1330, 1362, 1211, 1363) filed by Christopher B Spuches on
18 behalf of Attorney General, State of Florida. (ECF # 1415)

19
20 HEARING re Debtors' Omnibus Objection to Motions by Certain
21 Claimants for an Order Allowing them to Proceed with a Class
22 Proof of Claim and Certifying Class (related
23 document(s)1321, 1334, 1362, 1211, 1363) filed by James I.
24 Mcclammy on behalf of Purdue Pharma L.P. (ECF # 1421)

25

1 HEARING re The Ad Hoc Group of Individual Victims' Statement
2 in Support of Debtors' Omnibus Objection of Motions by
3 Certain Claimants for An Order Allowing Them to Proceed
4 With A Class Proof of Claim Proof of Claim and Certifying A
5 Class (related document(s)1421) filed by J. Christopher
6 Shore on behalf of Ad Hoc Group of Individual Victims of
7 Purdue Pharma L.P. (ECF #1423)

8
9 HEARING re The Official Committee of Unsecured Creditors
10 Response to and Request For Adjournment of Class Claim
11 Motions Until Conclusion of Mediation filed by Ira S.
12 Dizengoff on behalf of The Official Committee of Unsecured
13 Creditors of Purdue Pharma L.P., et al. (ECF #1425)

14
15 HEARING re Public Claimants' Omnibus Objection to Motions
16 for Leave to File Class Proofs of Claim (related
17 document(s)1330, 1362, 1211) filed by Kenneth H. Eckstein on
18 behalf of Ad Hoc Committee of Governmental and Other
19 Contingent Litigation Claimants. (ECF #1431)

20
21 HEARING re Reply to Motion filed by Joshua Karsh on behalf
22 of Independent Public School Districts (ECF #1473)

23
24
25

1 HEARING re Declaration Pursuant to 28 U.S.C. § 1746 of
2 Jeanne C. Finnegan (related document(s) 717) filed by James
3 I. McClammy on behalf of Purdue Pharma L.P. (ECF #719)

4
5 HEARING re Supplemental Declaration of Jeanne C. Finegan
6 (related document(s) 1178) filed by James I. Mcclammy on
7 behalf of Purdue Pharma L.P. (ECF # 1179)

8
9 HEARING re Motion of The Private Insurance Class Claimants
10 for Leave To File Class Proofs of Claim (ECF #1321)

11
12 HEARING re Omnibus Objection to Motion for the Request by
13 the Hospital Claimants, the Private Insurance Class
14 Plaintiffs, the Independent Public School Districts, the NAS
15 Guardians, and the Cheyenne and Arapaho Tribes for Leave to
16 File Motions for Class Relief (related document(s)1321,
17 1330, 1362, 1211, 1363) filed by Christopher B Spuches on
18 behalf of Attorney General, State of Florida. (ECF # 1415)

19
20 HEARING re Debtors' Omnibus Objection to Motions by Certain
21 Claimants for an Order Allowing them to Proceed with a Class
22 Proof of Claim and Certifying Class (related
23 document(s)1321, 1334, 1362, 1211, 1363) filed by James I.
24 McClammy on behalf of Purdue Pharma L.P. (ECF #41)

25

1 HEARING re The Ad Hoc Group of Individual Victims' Statement
2 in Support of Debtors' Omnibus Objection of Motions by
3 Certain Claimants for An Order Allowing Them to Proceed
4 With A Class Proof of Claim Proof of Claim and Certifying A
5 Class (related document(s)1421) filed by J. Christopher
6 Shore on behalf of Ad Hoc Group of Individual Victims of
7 Purdue Pharma L.P. (ECF # 1423)

8
9 HEARING re The Official Committee of Unsecured Creditors
10 Response to and Request For Adjournment of Class Claim
11 Motions Until Conclusion of Mediation filed by Ira S.
12 Dizengoff on behalf of The Official Committee of Unsecured
13 Creditors of Purdue Pharma L.P., et al. (ECF #1425)

14
15 HEARING re Public Claimants' Omnibus Objection to Motions
16 for Leave to File Class Proofs of Claim (related
17 document(s)1330, 1362, 1211) filed by Kenneth H. Eckstein on
18 behalf of Ad Hoc Committee of Governmental and Other
19 Contingent Litigation Claimants. (ECF #1431)

20
21 HEARING re Reply to Motion of The Private Insurance Class
22 Claimants in Further Support of Motion for Leave to File
23 Class Proofs of Claim filed by Nicholas F. Kajon on behalf
24 of Eric Hestrup, et al.. (ECF #1475)

25

1 HEARING re Notice of Hearing on Motion of The Private
2 Insurance Class Claimants For Leave To File Class Proofs of
3 Claim (related document(s)1321) filed by Nicholas F. Kajon
4 on behalf of Eric Hestrup, et al. (ECF # 1322)

5

6 HEARING re Notice of Amendment to Motion of The Private
7 Insurance Class Claimants for Leave to File Class Proofs of
8 Claim (related document(s)1321) filed by Nicholas F. Kajon
9 on behalf of Eric Hestrup, et al. (ECF # 1334)

10

11 HEARING re Declaration Pursuant to 28 U .S.C. § 1746 of
12 Jeanne C. Finnegan (related document(s)717) filed by James
13 I. McClammy on behalf of Purdue Pharma L.P.
14 (ECF #719)

15

16 HEARING re Supplemental Declaration of Jeanne C. Finegan
17 (related document(s) 1178) filed by James I. McClammy on
18 behalf of Purdue Pharma L.P. (ECF # 1179)

19

20 HEARING re Motion to Allow/ Hospital Claimants Pursuant to
21 Fed. Bankr. 9014 and 7023 for an Order Making Fed. R. Civ.
22 P. 23 Applicable to These Proceedings, and Permitting
23 Them to File a Class Proof of Claim and Granting Related
24 Relief (ECF #1330)

25

1 HEARING re Statement / Supplement to Hospital Claimants
2 Omnibus Reply to the Objections/Responses Filed at Docket
3 Nos. 1415, 1421, 1423, 1425, and 1431 to Hospital Claimants
4 Motion Pursuant to Fed. Bankr. 9014 and 7023 for an Order
5 Making Fed. R. Civ. P. 23 Applicable to These Proceedings,
6 and Permitting Them to File a Class Proof of Claim and
7 Granting Related Relief [Dkt. No. 1461] (related
8 document(s) 1330)
9
10 HEARING re Omnibus Objection to Motion for the Request by
11 the Hospital Claimants, the Private Insurance Class
12 Plaintiffs, the Independent Public School Districts, the NAS
13 Guardians, and the Cheyenne and Arapaho Tribes for Leave to
14 File Motions for Class Relief (related document(s)1321,
15 1330, 1362, 1211, 1363) filed by Christopher B Spuches on
16 behalf of Attorney General, State of Florida. (ECF # 1415)
17
18 HEARING re The Ad Hoc Group of Individual Victims' Statement
19 in Support of Debtors' Omnibus Objection of Motions by
20 Certain Claimants for An Order Allowing Them to Proceed
21 With A Class Proof of Claim Proof of Claim and Certifying A
22 Class (related document(s) 1421) filed by J. Christopher
23 Shore on behalf of Ad Hoc Group of Individual Victims of
24 Purdue Pharma L.P. (ECF # 1423)
25

1 HEARING re The Official Committee of Unsecured Creditors
2 Response to and Request For Adjournment of Class Claim
3 Motions Until Conclusion of Mediation filed by Ira S.
4 Dizengoff on behalf of The Official Committee of Unsecured
5 Creditors of Purdue Pharma L.P., et al. (ECF #1425)
6
7 HEARING re Public Claimants' Omnibus Objection to Motions
8 for Leave to File Class Proofs of Claim (related
9 document(s)1330, 1362, 1211) filed by Kenneth H. Eckstein on
10 behalf of Ad Hoc Committee of Governmental and Other
11 Contingent Litigation Claimants. (ECF#1431)
12
13 HEARING re Hospital Claimants' Omnibus Reply to the
14 Objections/Responses Filed at Docket Nos. 1415, 1421, 1423,
15 1425, and 1431 to Hospital Claimants Motion Pursuant to Fed.
16 Bankr. 9014 and 7023 for an Order Making Fed. R. Civ. P. 23
17 Applicable to These Proceedings, and Permitting Them to File
18 a Class Proof of Claim and Granting Related Relief (related
19 document(s) 1330) filed by Pearl Shah on behalf of Hospital
20 Claimants (ECF #1461)
21
22 HEARING re Supplement to Hospital Claimants' Omnibus Reply
23 to the Objections/Responses Filed at Docket Nos. 1415, 1421,
24 1423, 1425, and 1431 to Hospital Claimants Motion
25 Pursuant to Fed. Bankr. 9014 and 7023 for an Order Making

1 Fed. R. Civ. P. 23 Applicable to These Proceedings, and
2 Permitting Them to File a Class Proof of Claim
3 and Granting Related Relief [Dkt. No. 1461] (related
4 document(s)1330) filed by Pearl Shah on behalf of Hospital
5 Claimants (ECF # 1462)
6
7 HEARING re Supplement to Hospital Claimants' Motion Pursuant
8 to Fed. Bankr. 9014 and 7023 for an Order Making Fed. R.
9 Civ. P. 23 Applicable to These Proceedings, and Permitting
10 Them to File a Class Proof of Claim and Granting Related
11 Relief (related document(s)1330) filed by Pearl Shah on
12 behalf of Hospital Claimants (ECF #1424)
13
14 HEARING re Declaration Pursuant to 28 U.S.C. § 1746 of
15 Jeanne C. Finnegan (related document(s)717) filed by James
16 I. McClammy on behalf of Purdue Pharma L.P. (ECF #719)
17
18 HEARING re Supplemental Declaration of Jeanne C. Finegan
19 (related document(s)1 178) filed by James I. McClammy on
20 behalf of Purdue Pharma L.P. (ECF # 1179)
21
22 HEARING re NAS Class Claim Motion -NAS Guardians on Behalf
23 of The NAS Childrens Abatement Class Action Claimants Motion
24 For Entry of An Order Pursuant To Fed. R. Bankr. P. 9014 And
25 7023 Permitting Them To File A Class Proof of Claim And

1 Granting Related Relief (ECF # 1362)

2

3 HEARING re Omnibus Objection to Motion for the Request by

4 the Hospital Claimants, the Private Insurance Class

5 Plaintiffs, the Independent Public School Districts, the NAS

6 Guardians, and the Cheyenne and Arapaho Tribes for Leave to

7 File Motions for Class Relief (related document(s)1321,

8 1330, 1362, 1211, 1363) filed by Christopher B Spuches on

9 behalf of Attorney General, State of Florida. (ECF # 1415)

10

11 HEARING re The Ad Hoc Group of Individual Victims' Statement

12 in Support of Debtors' Omnibus Objection of Motions by

13 Certain Claimants for An Order Allowing Them to Proceed

14 With A Class Proof of Claim Proof of Claim and Certifying A

15 Class (related document(s) 1421) filed by J. Christopher

16 Shore on behalf of Ad Hoc Group of Individual Victims of

17 Purdue Pharma L.P. (ECF # 1421)

18

19 HEARING re The Ad Hoc Group of Individual Victims' Statement

20 in Support of Debtors' Omnibus Objection of Motions by

21 Certain Claimants for An Order Allowing Them to Proceed

22 With A Class Proof of Claim Proof of Claim and Certifying A

23 Class (related document(s)1421) filed by J. Christopher

24 Shore on behalf of Ad Hoc Group of Individual Victims of

25 Purdue Pharma L.P. (ECF #1423)

1 HEARING re The Official Committee of Unsecured Creditors
2 Response to and Request For Adjournment of Class Claim
3 Motions Until Conclusion of Mediation filed by Ira S.
4 Dizengoff on behalf of The Official Committee of Unsecured
5 Creditors of PurduePharma L.P., et al. (ECF #1425)
6
7 HEARING re Public Claimants' Omnibus Objection to Motions
8 for Leave to File Class Proofs of Claim (related
9 document(s)1330, 1362, 1211) filed by Kenneth H. Eckstein on
10 behalf of Ad Hoc Committee of Governmental and Other
11 Contingent Litigation Claimants. (ECF #1431)
12
13 HEARING re Response / Omnibus Reply by NAS Guardians on
14 Behalf of the NAS Childrens Abatement Class Action Claimants
15 to Objections Filed to Their Motion for Entry of an Order
16 Pursuant to Fed. R. Bankr. P. 9014 and 7023 Permitting Them
17 to File a Class Proof of Claim and Granting Related
18 Relief(related document(s)1421, 1415, 1423,
19 1431) (ECF #1487)
20
21 HEARING re Response The NAS Children Ad Hoc Committees
22 Joinder to The Official Committee of Unsecured Creditors
23 Response to and Request For Adjournment of Class Claim
24 Motions Until Conclusion of Mediation (related
25 document(s)1425, 1362) (ECF #1486)

1 HEARING re Declaration Pursuant to 28 U.S.C. § 1746 of
2 Jeanne C. Finnegan (related document(s) 717) filed by James
3 I. McClammy on behalf of Purdue Pharma L.P. (ECF #719)

4
5 Supplemental Declaration of Jeanne C. Finegan (related
6 document(s) 1178) filed by James I. McClammy on behalf of
7 Purdue Pharma L.P. (ECF # 1179)

8
9 HEARING re West Virginia NAS Class Claims Motion - Motion to
10 Permit the Filing of a Class Proof of Claim filed by Peter
11 D'Apice on behalf of Tiffany Dunford (ECF #1408)

12
13 HEARING re The Official Committee of Unsecured Creditors
14 Response to and Request For Adjournment of Class Claim
15 Motions Until Conclusion of Mediation filed by Ira S.
16 Dizengoff on behalf of The Official Committee of Unsecured
17 Creditors of Purdue Pharma L.P., et al. (ECF # 1425)

18
19 HEARING re Debtors' to Objection Tiffany Dunford's Motion to
20 Permit the Filing of a Class Proof of Claim (related
21 document(s) 1408) filed by James I. McClammy on behalf of
22 Purdue Pharma L.P. (ECF # 1489)

23
24 HEARING re Public Claimants' Joint Objection to Tiffany
25 Dunford's Motion to Permit the Filing of a Class Proof of

1 Claim (related document(s) 1408) filed by Kenneth H.
2 Eckstein on behalf of Ad Hoc Committee of Governmental and
3 Other Contingent Litigation Claimants (ECF #1493)

4
5 HEARING re Declaration Pursuant to 28 U.S.C. § 1746 of
6 Jeanne C. Finnegan (related document(s) 717) filed by James
7 I. McClammy on behalf of Purdue Pharma L.P. (ECF #719)

8
9 HEARING re Supplemental Declaration of Jeanne C. Finegan
10 (related document(s) 1178) filed by James I. McClammy on
11 behalf of Purdue Pharma L.P. (ECF # 1179)

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25 Transcribed by: Sonya Ledanski Hyde

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14 KATIE STADLER

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16 NICHOLAS KAJON
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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Judge Drain
3 and we're here on a number of matters in In RE: Purdue
4 Pharma, LP, et al. This is a completely telephonic set of
5 hearings. I will ask you to identify yourself and your
6 client the first time speak. I may do that again if you
7 speak later, and I believe that the Court reporter won't be
8 able to put together your name with your voice. You may
9 consider doing that, as well.

10 There's one authorized recording of these
11 hearings. It's being taken by Court Solutions. If you want
12 to get a transcript of the hearing on your matter, you can
13 contact our clerk's office to arrange for one to be
14 prepared. The recording is provided to the clerk's office
15 on a daily basis by Court Solutions.

16 So, with that introduction, I have the amended
17 agenda for today's hearing and at least for the first few
18 matters on the agenda, I'm happy to go down in the order
19 that appears on the agenda.

20 MR. HUEBNER: Terrific. Your Honor, am I coming
21 through clearly for the Court?

22 THE COURT: Yes, I can hear you clearly.

23 MR. HUEBNER: Terrific. Good afternoon, Your
24 Honor. May it please the Court, for the record, I'm
25 Marshall Huebner of Davis, Polk, and Wardwell, LLP, on

1 behalf of the Debtors, Purdue Pharma, LP, its 22
2 subsidiaries, and Purdue Pharma, Incorporated, its general
3 partner.

4 Your Honor, as someone who is not looking very
5 good during COVID-19 quarantine, I would like to thank you
6 for having this hearing be entirely telephonic. (sound
7 drops) suit these days for the Courts that asked us to sign
8 into video as well, so I think many of us are probably
9 grateful, on a personal note.

10 Your Honor, as you can see from today's agenda,
11 the first item is exclusivity which is actually a good
12 jumping off point for what I think is possibly an important
13 conversation about timing generally and an update on the
14 status of these Chapter 11 cases, which of course, is quite
15 typical exclusivity extension.

16 On the one hand, mission critical and very
17 material progress has been made on a great many fronts in
18 the last few months. For example, putting aside the motions
19 on for today's hearing, which is really a single contested
20 matter conceptually, the class proof of claim issue, the
21 last several hearings in this case have actually been
22 largely and often fully consensual. This is one of many
23 indicators of the material progress that the Debtors and
24 other parties have been making in these cases. A few other
25 things that I think are important to set the stage for

1 today, one, the business itself remains stable and
2 protected.

3 People sometimes forget that there's a large and
4 complex operating business here, not just a "Debtor" and a
5 "defendant," and the financial, operational, and
6 manufacturing safety and stability of Purdue is absolutely
7 essential to hundreds of thousands of patients who rely on
8 their suite of medications and on claimants, and this could
9 have been otherwise, especially with COVID-19 layered on top
10 of Chapter 11, layered on top of the prefiling litigation,
11 and so I just do want to note that the Debtors' financial,
12 operational, and safety performance sometimes is, but really
13 shouldn't be, taken for granted.

14 Two, the various public health initiatives that
15 we've discussed in this courtroom over time, continue on
16 pace. In March 2020, the FDA approved generic Suboxone,
17 which is the buprenorphine-naloxone tablet and the company
18 now stands ready to manufacture this valuable product. Two,
19 the OTC, the over-the-counter naloxone nasal spray discussed
20 relatively recently in connection with the HRT motion, OTC
21 naloxone, if it pans out, which we all desperately hope it
22 will, is to be a low-cost, nonprescription, essentially,
23 version of Narcan, the leading prescription opioid rescue
24 drug.

25 The FDA continues to encourage the development of

1 the medicine and has gone so far as to proactively develop
2 and test a model drug facts label which we understand has
3 never before happened in FDA history. HRT, as of now,
4 remains on track to submit the new drug application to the
5 FDA in a year, and hopes to receive FDA approval before the
6 end of next year.

7 Several hearings ago, we discussed injectable
8 nalmeffene, which is the third major public health initiative
9 drug. This is the second-generation opioid overdose rescue
10 medicine that is, hopefully, going to deal with things like
11 fentanyl which current things cannot always deal with
12 because of the half-life, as we've discussed before.

13 As Your Honor may remember, Purdue is developing
14 three forms of the medicine. All three have been granted
15 expedited review by the FDA and two are on track to be
16 approved by the FDA within the next year. With respect to
17 the autoinjector, I'm happy to report that process
18 development and device engineering work actually has already
19 begun and is now underway. That topic is now down.

20 Three, key parties to the case have participated
21 in material and very fecund exchange, in fact, a set of
22 exchanges, about the financial and post-emergence
23 projections of the Debtors and related matters. The
24 financial advisors for key constituencies appear to be
25 seeing the number in substantially the same way, which is

1 likewise a very important and continuing development. Four,
2 we have reached agreement with all parties on all aspects of
3 Debtor-facing discovery in these cases, including with
4 respect to multipronged information requests from the
5 dissenting states and the UCC.

6 This was a monumental task that required
7 compromises by many, including, of course, the Debtors.
8 Many, many people in these cases, as Your Honor well knows,
9 want many, many things and have many strong views on many
10 topics. There's only one Debtor, but there are more than 10
11 Ad Hoc Committees and the UCC.

12 Candidly, had you asked pretty much anyone,
13 including me, whether 10 months into this case, we would be
14 standing here and being able to note that not a single
15 formal discovery demand has been served on the Debtors,
16 because everything has been resolved consensually, I'm
17 pretty sure that nobody would've taken that bet, but I'm
18 proud to report that that's actually where we are and the
19 review and rolling production of more than one million
20 incremental documents proceeds.

21 Five, as this Court has no doubt noted, the Ad Hoc
22 Committee or AHC, the dissenting states, and the MSGE Group,
23 have, in the last few months, been of the same view on a
24 wide variety of topics, in some cases, even filed joint
25 pleadings, not infrequently, I might note, of late in

1 support of or non-objection to the Debtors. This ongoing
2 coalescing of the public side stakeholders is very important
3 with much more, of course, going on under the waterline.

4 Six --and this is the last of the numbered points
5 -- with respect to mediation, I am, of course, limited in
6 terms of what I can say by mediation -- by the mediation
7 privilege and order, but here is what I can say. Your Honor
8 entered the mediation order on March 4, 2020, and we have
9 now been at this for four-and-a-half months, not a short
10 period. On some fronts, there has been both exciting and
11 meaningful and important progress. On other issues, the
12 progress has not been all that we would've hoped.

13 The mediators have been fully and deeply engaged
14 and have made an extraordinary difference in moving
15 discussions forward. Unfortunately, one of the realities we
16 all face in this situation and others is that the new remote
17 environment in which we find ourselves in light of COVID-19
18 takes away many of the pressurization tools normally open to
19 mediators, including hauling senior principals to meetings
20 or keeping parties sequestered in conference centers,
21 sometimes with no food or water, to facilitate resolution.

22 And these realities have, unfortunately, extended
23 the timetable of the mediation, well beyond the original
24 expectation for mediating the intercreditor allocation
25 issues. The Debtors have considered various ways to address

1 this, including looking into whether we have the right,
2 unilaterally, to seek to set an end date to this phase of
3 the mediation.

4 The Debtors ultimately decided, after close review
5 of the order and talking to various parties, that in lieu of
6 attempting unilateral action, we would alert the Court to
7 our strong view, that the time is ripe to move this phase of
8 the mediation to conclusion and that an established deadline
9 or end date that is a limited number of weeks away is likely
10 appropriate at this time, which is a good segue into larger
11 issues about pacing of these cases more generally.

12 As Your Honor without any question well remembers,
13 at a few of the recent hearings, Your Honor has,
14 understandably, asked a number of questions, quite
15 understandably, about plans for timing and deadline. On
16 June 3rd, Your Honor reminded all in attendance that
17 "Parties here need to understand that there's a public
18 health crisis. As COVID has brought home, many views need
19 to be taken into account, but an effort to achieve
20 perfection will leave the people who are suffering at
21 greater harm."

22 You also noted if people cannot set aside their
23 views as to the perfect use for the money, the Court would
24 take steps to move along the case separately and "it's shame
25 on us if we don't do that. This is flesh and blood. The

1 similar vein," you said you "want this case to move and...
2 we'll make it move if the parties don't start accommodating
3 each other," a sentiment you later repeated on June 23rd.

4 In a related vein, before I get back to the
5 calendar, these statements echo the Court's view which has
6 also been the Debtors' view and those of other parties as
7 well, that the discovery and diligence and the mediation
8 process are all critical but must also be tempered against
9 the urgent need to get these cases through and out and to
10 get money and lifesaving treatments in the hands of those
11 most affected by the public health epidemic.

12 As Your Honor noted on May 1st, "At some point,
13 the information process needs to stop because you're going
14 to reach the point of diminishing returns." Your Honor, in
15 our view, today is the time to start talking more openly and
16 plainly about starting to move these cases forward to the
17 mouth of the exit chute from Chapter 11. Many mass tort
18 cases go on for many years. This one should not, cannot,
19 and must not be one of them.

20 As you, of course, saw in our papers, we very
21 intentionally did not ask for the 180-day extension that
22 many might have. We think that a plan should go on these --
23 on file in these cases well before the end of 2020, and my
24 personal view is that October or early November seems like
25 the right target, and hopefully achievable.

1 However, there are some obstacles to that
2 aspirational timing. For a variety of very good reasons,
3 the Debtors have not once taken a position with respect to
4 any of the discovery disputes, spats, or conversations
5 between various creditor groups on the one hand and
6 shareholders on the other, or sought to limit discovery
7 requested by any other party. Of course, the Court ruled
8 where it had to, but the end result is the document
9 discovery will not end until October 1 or October 26,
10 depending on exactly how you define end.

11 If documents are produced through and well into
12 October, parties are likely to assert that they then need
13 additional time to read and digest the last of the
14 productions, decide on appropriate deponents, take
15 deposition, then reassess their views on all the topics at
16 hand, and only then, in earnest, start negotiations on the
17 global settlement.

18 In the Debtors' perspective, this schedule is
19 highly problematic. The idea that it could become November
20 or even December before end-stage negotiations on a global
21 deal get going in full earnest is painfully suboptimal and
22 poses a number of risks to the company and to a value-
23 maximizing restructuring because, of course, as everyone
24 knows, once there is an agreed plan, there's a further delay
25 of at least three months from the filing of a disclosure

1 statement and plan to emergency from Chapter 11.

2 To have no plan on file until very late in 2020 or
3 even in 2021, and thus no emergence well into 2021, first of
4 all, poses risks to the business itself. As this Court well
5 knows, no company should sit in Chapter 11 any longer than
6 is necessary, and this one probably more than many.

7 Second, a later emergence from Chapter 11 results
8 in very large sums of money continuing to just sit in bank
9 accounts, instead of being deployed out there in the real
10 world to save lives while the opioid crisis rages on all
11 around us and lives continue to be destroyed or lost.

12 Third, the costs and burdens associated with an
13 extended stay in Chapter 11 are very material. Every month
14 is tens of millions of dollars that could otherwise go to
15 save lives. So, looking at the calendar, here are some
16 thoughts. July will soon be behind us. We hope that the
17 balance of July and August is the period which the
18 intercreditor allocation conversations and this current
19 mediation, or phase of the mediation, come to a conclusion,
20 one way or another.

21 That suggests that September or early October
22 should be the landing zone for negotiations among creditors,
23 the Debtors, and the shareholders, hopefully, to come to
24 fruition, leading to the goal, as I said before, of filing a
25 plan with sufficient creditor support in October or early

1 November. But to achieve this, many parties have to adhere
2 to this schedule. The Debtors continue to believe, strongly
3 and unequivocally, that a global settlement that includes
4 substantial contributions from the shareholders make, by
5 far, the most sense for all parties to these cases.

6 That was a North Star with which we came into
7 Chapter 11 and that is the North Star to which we -- by
8 which we continue to navigate. Hopefully, the balance of
9 today's agenda will help provide critically needed clarity
10 that will advance and accelerate these cases. While we
11 would have like to have shared the Committee's view, since
12 we have, as Your Honor knows, adjourned things wherever we
13 can and resolved a tremendous number of things without
14 contested hearings, it is actually our view that ruling on
15 today's contested motions will actually add substantial and
16 critically needed clarity to the case.

17 Unless Your Honor has any questions, since
18 exclusivity itself was uncontested, I have nothing more to
19 say on that topic; although, obviously, I'm aware that I
20 roved a little widely because I had put Your Honor off at a
21 couple of hearings already (sound drops) questions about
22 what is the timing of this case, what are the Debtors'
23 thoughts, what kind of deadlines do you think are coming or
24 might help, and as I promised you, the answers were coming,
25 and hopefully I have addressed things in a way that the

1 Court and hopefully many other people find thoughtful and
2 sensible.

3 THE COURT: Okay.

4 MR. PREIS: Your Honor, this is Arik Preis from
5 Akin, Gump, Strauss, Hauer, and Feld on behalf of the
6 Official Creditors Committee. I don't --

7 THE COURT: Okay.

8 MR. PREIS: -- even know -- good afternoon, Your
9 Honor. I don't even know where to begin, because again,
10 we're in a virtual world so I'm emailing with my colleagues.
11 We knew nothing about any -- some of the things that Mr.
12 Huebner just went through. I don't know what he was
13 referring to with regard to agreement of parties on various
14 issues or that he's spoken with us, because he has -- this
15 is the first we've ever heard of what he just said.

16 He also made some references to agreements on
17 discovery that he thinks we and the Debtors have which are
18 just not true and I'll let the nonconsenting states speak
19 for themselves. But I'm not sure what you want us to do
20 with all of his statements. I don't think this -- there's
21 no item in front of you on this issue right now, so I don't
22 want to start speaking contemporaneously about it, so I --
23 what would you like for us to respond to, what Mr. Huebner -
24 -

25 THE COURT: Well, look, the Debtors' motion to

1 extend the plan exclusive periods is before me and while it
2 is unopposed, Mr. Huebner is right that one of the functions
3 of the need to show cause to extend the exclusive period is
4 to enable parties in interest and the Court to focus on the
5 progress of the case, and I prepared for this hearing, in
6 part, to raise questions that, obviously without any
7 communication between us, Mr. Huebner in some way
8 anticipated.

9 I have given more focus to the timing of the
10 mediation and, in part, that's because of the pleadings that
11 are in front of me on the class claim, class certification
12 motions. But I, in each of the omnibus hearings, have
13 focused also on the timing to resolve, or to be in a
14 position to resolve, what I view as the other main set of
15 issues in this case, which are all related to the potential
16 role of Sackler family members in funding a plan.

17 I am less conversant on where the parties stand
18 with their due diligence on that inquiry and it's not only
19 due diligence that involves multiple people, but also at
20 least two sets of issues, issues regarding potential
21 transfers, which has been a major focus of the Committee's
22 analysis, and issues regarding potential claims against the
23 Sackler's, separate from derivative claims, and/or resources
24 of the Sacklers.

25 I appreciate that's a very complicate due

1 diligence effort to get to the bottom of those two issues.
2 On the other hand, I also know that a substantial amount of
3 resources have been spent already in generating quite a bit
4 of information on those issues, and it was my hope, although
5 just the mechanics of 21st century discovery inevitably
6 complicate the inquiry, because on one level, one can obtain
7 a lot more information because people communicate digitally,
8 but also can extend the time for it to be produced and
9 analyzed.

10 So, I don't know as well the track that the
11 parties are on, on that front, and I didn't really
12 anticipate them to be prepared to discuss that unless they
13 wanted to. But I clearly share the hope that Mr. Huebner
14 articulated on the Debtors' part, that meaningful plan
15 negotiations with respect to the Sacklers' funding of a plan
16 would take place starting in the early fall, based on my
17 knowledge of when document discovery should be complete and
18 the amount of information that people have to date.

19 Obviously, they would be subject to confirmatory
20 due diligence, but what we're talking about here is not a
21 litigation for a trial, but rather discovery to support
22 negotiations over a potential settlement. So, I don't know
23 if that answered your question, Mr. Preis. You're a careful
24 lawyer and you don't want to get ahead of your clients, and
25 I appreciate that, but I had made it clear to the parties

1 last month that I didn't want these cases to drift. In
2 part, that was a message to the Sacklers' counsel and
3 counsel for the entities in which they hold a controlling
4 interest. In part, it was for other parties, to start
5 working together more and not aiming for achieving the
6 impossible, which is everything they want, at the exclusion
7 of legitimate requests by other parties.

8 So, I do intend, in connection with the Debtors'
9 exclusivity motion, to address the timing going forward in
10 this case.

11 MR. PREIS: Your Honor, then if that's the case,
12 then I think it would be helpful -- you correctly point out
13 that this case is on two different tracks, one track being
14 the mediation track, the other track being the, I'll just
15 call it the Sackler track. I think it would be instructive
16 for my partner, Mr. Hurley, to just speak about that and to
17 speak about the timing as well as what has gone on in
18 discovery, so you have an understanding of how we're
19 thinking about timing and --

20 THE COURT: Okay.

21 MR. PREIS: -- as well as the issues that we heard
22 from the constituents in the case about what it is they'd
23 like us and them working together, per the litigation
24 protocol we've worked out, to uncover. So, can I ask Mr.
25 Hurley to address the Court?

1 THE COURT: Sure, that's fine.

2 MR. PREIS: Okay.

3 MR. HURLEY: Thank you, Your Honor. It's Mitch
4 Hurley, for the record, from Akin Gump on behalf of the
5 Official Committee of Unsecured Creditors. Your Honor,
6 preliminarily, Mr. Huebner did indicate that agreement had
7 been reached between the Debtors and, I think he said, used
8 a phrase something like, all parties on all aspects of
9 discovery. Maybe I didn't hear it quite right.

10 I just want to be very clear on that,
11 preliminarily. It is true that the Committee and the
12 Debtors have reached agreement, in principle, regarding the
13 collection and production of certain materials. We don't
14 actually yet have a formal agreement. We hope one is going
15 to emerge soon, but it's important to note there are also
16 very significant issues that we have not yet reached
17 agreement on related to discovery with the Debtors,
18 including but not limited to some very important issues
19 concerning privilege.

20 We're certainly going to continue to try and
21 resolve those issues without Court intervention, but it's
22 possible we're going to need to seek the Court's help in
23 that regard. We'll try to avoid it if we can, of course,
24 and so I just want to make sure it's clear on the record
25 that we believe that there are some pretty substantial

1 discovery issues that still need to be worked out between us
2 and the Debtors.

3 THE COURT: Are you getting information in the
4 meantime?

5 MR. HURLEY: We are, Your Honor. Absolutely. The
6 Debtors have begun to produce documents to the Committee and
7 have been, for some weeks. I believe, in accordance with
8 the expectation that the agreement in principle we have is
9 going to be formalized, and so information is definitely
10 flowing, Your Honor. I didn't mean to suggest otherwise.

11 THE COURT: Okay, and it is being analyzed?

12 MR. HURLEY: As it comes in, Your Honor, yes,
13 indeed.

14 THE COURT: Okay. And what is the status of the
15 information flow from the Sackler parties, first the
16 Sacklers directly and then the related companies?

17 MR. HURLEY: Well, it's as reflected in the
18 stipulations that we submitted, including a stipulation with
19 respect to the IACs, but I think was submitted to the Court
20 yesterday. Our understanding is that the information flow
21 from the parties to those stipulations has, at least for the
22 most part, been undertaken on the schedule that's
23 contemplated by those documents. I would note, Your Honor,
24 in the statement that was filed by the public side in
25 connection with the exclusivity motion, they pointed out

1 that the Sacklers currently have until the end, basically,
2 of October, but I'll refer to the Sacklers to include their
3 affiliated entities, the IACs and others.

4 Public side pointed out that the Sackers, under
5 the stipulations, currently have until the end of October to
6 complete document production and file us privilege logs, and
7 they note that since critical documents and information not
8 only have to be produced by the Sacklers but also
9 appropriately analyzed -- that's the phrase the public side
10 uses in their statement -- in connection with further
11 negotiations over any potential settlement of the cases, the
12 public side suggests that the Debtors are not likely to be
13 in a position to propose a confirmable plan even at the end
14 of the extended exclusivity period unless, as the public
15 side put it, the Sackers more "more quickly" than is
16 required by the current discovery stipulations.

17 In the Committee's view, the public side probably
18 is not really even being realistic enough about the likely
19 timeline for these cases. For one thing, we have no reason
20 to believe that the Sacklers and their affiliates will move
21 more quickly than agreed, pursuant to the stipulations.

22 As we believe the Court is aware, the Committee
23 really fought tooth and nail to get the commitments from the
24 Sacklers and their affiliates that are embodied in the
25 stipulations that are on file, including by submitting to

1 you extensive letter briefs on discovery issues and then
2 negotiating the detailed disclosure schedules in the
3 stipulations over the course of weeks. One of those
4 stipulations I noted with the IACs was filed just yesterday,
5 and as we have learned, as this case has gone on, discovery
6 from the IACs is absolutely critical to these cases,
7 including with respect to fraudulent transfers to the IACs
8 and because the IAC's global advisory board would -- acts as
9 a kind of board of directors, appears to have had a key roll
10 in directing the affairs of Purdue as well as the IACs.

11 This is to name just a few issues as to which IAC
12 discovery we think is going to be of central importance.
13 Now, as the Court is aware, for the first five months of the
14 cases, we were told repeatedly that our request for IAC
15 discovery should go to Norton Rose, because Norton Rose --

16 THE COURT: No, we -- I don't need to go --

17 MR. HURLEY: Okay.

18 THE COURT: I'm fully aware of the history here.
19 I'm really just focusing on the production as it currently
20 sits.

21 MR. HURLEY: Fair enough. So the IACs later
22 appointed Royer Cooper as their counsel and we really worked
23 with them over the past weeks, basically on a daily basis,
24 to get to the disclosure schedule that was submitted
25 yesterday, and it is our expectation and Royer Cooper's done

1 nothing in the course of those weeks to cause us to believe
2 otherwise, that disclosures are going to be made on the
3 schedule that's contemplated by that document, but we think
4 that the notion that document discovery is going to be
5 completed more quickly than under the deadlines that are
6 embodied in those stipulations, just isn't realistic.

7 Also, as I think we've consistently foreshadowed,
8 we believe there are going to be very important disputes
9 over privilege in these cases that would result in important
10 additional production of documents, maybe some of the most
11 important documents in the cases. We also have noted in the
12 past that, at least from the Committee's view, document
13 disclosure is not the end of discovery in the cases.

14 There are depositions of critical witnesses that
15 we and we believe the other creditors in the case believe
16 have to be taken in an effort to get to the bottom of
17 Purdue's role in creating the opioid crisis, what the
18 Sacklers knew and when they knew it.

19 We are, of course, Your Honor, fully cognizant of
20 the statement that you made at the last hearing, which you
21 basically repeated today, that discovery in bankruptcy cases
22 is typically less comprehensive than discovery in plenary
23 litigation. We understand that. We also note that in the
24 last hearing, Your Honor acknowledged, nearly at the same
25 time, that this is no ordinary bankruptcy case, and of

1 course, it is not.

2 With the support of most, if not all of Purdue's
3 creditors, which we at least view as the sole stakeholders
4 of Purdue in these cases, and with the active participation
5 of many of the states and other claimants in the cases, we
6 are seeking to examine the roots and help assign
7 responsibility for one of the worse public health crises in
8 the history of the country. The Sacklers are quite correct
9 in their submission that discovery in the cases so far has
10 been burdensome for them and we expect it will remain so,
11 both for them and their affiliates and associates.

12 But discovery is always burdensome. The question
13 is whether the burden is undue under the circumstances, and
14 in light of the importance of the issues that we're
15 investigating. Their vast resources and the billions of
16 dollars at stake, we don't think there's any serious doubt
17 that the burden that's being placed on them is proportional
18 to the needs of the case. Critically, at least in our view,
19 it's not just Purdue's creditors that support this
20 painstaking examination of Purdue that we are undertaking.

21 Increasingly, an examination of that client has
22 been demanded by victims, activists, the public at large. A
23 piece was published in the New York Times, I believe only
24 yesterday, with the headline, "The Sacklers Could Get Away
25 With It." Numerous activists and others have written Your

1 Honor to seek appointment of an examiner, I think to try to
2 ensure that the Sacklers, in fact, don't "get away with it."

3 Now, we don't think an examiner is an answer. I
4 think it would only increase the cost and time necessary to
5 get to the bottom of these critical events, and we all know
6 other issues that would come with the appointment of an
7 examiner. The answer, we submit, respectfully, is to allow
8 the Committee, side by side with the states and the other
9 creditors who are cooperating with us through the litigation
10 protocol, to complete the examination, including through
11 discovery that is as comprehensive as may be necessary to
12 get answers that Purdue's creditors and victims in the
13 public are demanding.

14 We, the Committee, pledge that we will continue to
15 do everything in our power to speed those necessary
16 disclosures, but we have to say, we share the public side's
17 skepticism, and really then some, that sufficient
18 disclosures can be made on a schedule that would allow for a
19 confirmable plan by December. The work that remains to be
20 done is, much of it, is laid out in the stipulations. We
21 believe there will be other important discovery to take as
22 well.

23 THE COURT: Is the material being produced on a
24 rolling basis and being reviewed on a rolling basis by the
25 parties that have access to it?

1 MR. HURLEY: Yes, Your Honor.

2 THE COURT: And that includes the public side
3 parties that are included in the discovery orders?

4 MR. HURLEY: The Committee is coordinating with
5 other creditors, including elements of the public side, to
6 ensure that they have access to that information, as is
7 appropriate. I mean, as Your Honor knows, we're trying to
8 avoid a situation where a bunch of different law firms are
9 reviewing the same documents, so it's not like the
10 nonconsenting state group's counsel is separately reviewing
11 all these materials. We're coordinating on that.

12 THE COURT: No, that's what I expected.

13 MR. HURLEY: Yes.

14 THE COURT: And I'm glad of that. I just want to
15 make sure that it's not just being reviewed by your
16 Committee, but that you're parceling -- not you, yourself,
17 but the parties are parceling out the work among themselves.

18 MR. JOSEPH: Your Honor --

19 MR. HURLEY: The plan is to coordinate in that
20 manner, Your Honor.

21 THE COURT: Okay.

22 MR. JOSEPH: Your Honor, this is Gregory Joseph
23 for the Raymond Sackler parties. May I be heard?

24 THE COURT: Well, let me make sure I have
25 addressed the concerns I had about the timing here. I want

1 to be clear, and maybe that's one reason I'm cutting you
2 off, Mr. Joseph. I am not looking at this in the context of
3 what is burdensome on the Sacklers. I'm not viewing this as
4 a discovery -- a sort of discovery dispute between the
5 Sacklers or the IACs on the one hand and the Committee and
6 public claimant on the other.

7 Those disputes have been relatively few, as far as
8 bring raised to my level as opposed to being worked out by
9 the parties. What I'm focusing on here is to make sure that
10 time isn't being wasted or that isn't going by in a way that
11 isn't efficient, and I guess my only question further on
12 that is to focus on -- is to make sure that when, Mr.
13 Hurley, you say that you want to get to the bottom of
14 whatever happened, you and your colleagues are not doing
15 that with a historian's perspective, but focusing on actual
16 potential legal causes of action, either that the Debtors
17 would have or that would be the subject of a claim release
18 that the Sacklers would want in return for paying into the
19 plan.

20 I'm assuming that's the case, but I want to make
21 sure. Is it the case?

22 MR. HURLEY: Your Honor, that is -- this is Mr.
23 Hurley again. Your Honor, that is absolutely the case.
24 Obviously, because of the nature of the estate claims, part
25 of what we're looking at is questions related to insolvency,

1 which relate, of course, directly to the liability of Purdue
2 at various times, but the answer to the question is yes, our
3 focus is on the claims that would potentially be subject to
4 release under the plan, or under a plan.

5 THE COURT: Okay.

6 MR. HUEBNER: So, Your Honor, if I can just jump
7 back in for a minute. There are a bunch of things that were
8 said in the last 15 minutes that I actually find shocking
9 and will have to take that up directly with Akin Gump after
10 this hearing, but let me say three things I hope will just
11 be helpful to everybody.

12 Number one, let me remind the Court and everyone
13 that the Debtors have stated on the record at multiple
14 hearings that it is their view that once we come out the
15 other side of this, a repository of documents that will be
16 full and open and public is going to be part of any deal,
17 because we fully understand and support and agreed to at the
18 very first time it was ever raised that that be true.

19 Number two, the whole issue of the Special
20 Committee -- and people are a little bit forgetting that
21 massive reports have already been put on the docket that
22 list hugely important things, to the tune of about 800
23 pages' worth of analysis, which isn't to say that there
24 isn't more work to do, but the nature of the transfers, the
25 amounts of the cash transfers were fully put out in the

1 public eye months and months ago.

2 And three, I do want this remembered. The notion
3 that I just heard that we think December may be far too soon
4 to get a plan on file and overly optimistic and the states
5 have it wrong and it's not just the consenting states, it's
6 the whole government side, that is not our vision. Our
7 vision is not that we're still sitting in this bankruptcy
8 case in six months, in January, with another \$150 million or
9 more of professional fees and potentially hundreds of
10 millions of dollars of value lost that is permanent through
11 the business, so that every single document going back 25
12 years that has been asked for has been fully digested.

13 Since we can't get a plan done here without
14 sufficient creditor support, if that's ultimately the views
15 and demands of the creditors and the Court is agreeable to
16 that, obviously it will be what it will be, but our vision
17 is that everyone needs to prioritize and accelerate and
18 decide when they have enough information. More always
19 sounds right. There could always be that smoking gun.
20 There could always be one more issue. I can strengthen my
21 case even farther.

22 The problem is, the cost of more has now grown to
23 tens of millions of dollars a month and there's just a
24 balance to be struck. And so, to be clear, we're not asking
25 for any relief right now other than the relief requested in

1 the exclusivity motion, which it sounds like the Committee
2 wanted us to ask for more because they think we were
3 unreasonably short -- though we don't. Two, we were a
4 little bit more precise that we don't -- there's no mechanic
5 in the order appointing the mediators to end this phase of
6 the mediation and the Debtors have no ability to say they do
7 not feel they should be paying anymore because we need to
8 pressurize it.

9 And so, we're not formally asking for relief. The
10 Court has asked me pointedly at three hearings in a row,
11 what is the Debtors' vision, what is the Debtors' timeline,
12 when is mediation ending. And so, I do want to say, it is
13 the Debtors' view that something like the end of August
14 seems like the right deadline to pressurize the situation
15 for mediation on the intercreditor allocation.

16 No matter how hard many people are working, the
17 reality is, with all of us (sound drops) own homes, trying
18 to stay safe and healthy and well, with no ability to be
19 dragooned and stared down by mediators and forced to stay
20 until two in the morning, I believe we need some external
21 help pressurizing this phase of the mediation so we can go
22 on to the next phase.

23 If the Committee or others believe that they're
24 not going to be ready, willing, or able to try to negotiate
25 a deal with the Sacklers by September and they need until

1 December or January, and the view is, we should spend (sound
2 drops) million dollars more in fees to get there, that's
3 fine. That's not the Debtors' view, but the Committee is
4 entitled to their view if that really is their view. But I
5 was asked questions by the Court that I refused to answer in
6 three hearings and that was my limit and I felt an
7 obligation to actually answer what the Court asked me on
8 these questions.

9 THE COURT: Okay. Mr. Joseph, you were going to
10 say something?

11 MR. JOSEPH: Thank you, Your Honor.

12 THE COURT: Or maybe it got preempted.

13 MR. JOSEPH: No, it actually is responsive to what
14 Mr. Huebner was just saying. Right now, just on the B side,
15 we're in the process of reviewing nearly a million documents
16 which means multiple million pages covering a 25-year
17 period. Before we started -- before we started -- everybody
18 in the case already had 50 million pages of documents from
19 Purdue that have been produced in the MDL. They had two
20 current depositions from Sackler defendants, and all the
21 claims against the Sacklers are derivative of claims against
22 Purdue.

23 Those are, overwhelmingly, Purdue documents,
24 Purdue solvency and its aware of litigation risk Purdue
25 documents. So, we're now collecting other data, not Purdue

1 documents, and we've collected over 7.6 terabytes of data.
2 That is half the volume of the Library of Congress. Judge
3 Coats had an opinion about 15 years ago saying that 4
4 terabytes, half of what we've collected, would fill 16 Sears
5 Towers.

6 So, we've got about 30 Sears Towers' worth of
7 documents. We've already produced the most important
8 documents. They already have from the Debtors the business
9 emails of our clients. We produced the personal ESI from
10 Richard John and David Sackler from 1995 or before through
11 the time they left the board in '18 or '17. That required
12 review of over a million pages and it was done by July 1.

13 We're going to be finished with the manager of the
14 family office and all his documents by August 14th and by
15 September 1, they'll have all of the tax filings, the
16 financial statements, the audit reports, and the bank
17 records for 44 trusts, six companies, and the individuals on
18 our side. So, what's taking until October 1st -- and these
19 are all agreed dates which were filed in a stipulation in
20 June -- is children and spouses who never had a full-time
21 job a Purdue, and that's another 165,000 documents -- I
22 don't know if that's a million pages, but it's a lot of
23 pages -- and documents from a company David Sackler founded
24 and left.

25 Documents are going to be produced September 1.

1 If we were in a conventional litigation or an adversary
2 proceeding, you'd never go back 25 years to all of these
3 custodians. We've already produced nearly a half-a-million
4 pages. We've made six productions since May 1. We have 90
5 lawyers reviewing documents. The timeline is governed by
6 the scope of the demands. Those are agreed to dates, but I
7 have to say, I find it highly, highly offensive for
8 Committee counsel to be talking about the Sacklers getting
9 away with something.

10 They have not articulated a claim and we don't
11 believe there ever will be a claim they can articulate
12 against the Sacklers, and I think that ought not have been
13 stated, whether it's under the guise of quoting the headline
14 of an op-ed piece in the New York Times and then saying the
15 Sacklers may be able to get away with it, which is the
16 Committee saying something which they have no right to say.
17 They stated no claims, but I don't want to carry on. Thank
18 you, Your Honor.

19 MR. HUEBNER: Your Honor, can I --

20 MR. HURLEY: Your Honor --

21 MS. BALL: Your Honor --

22 MR. HURLEY: It's Mitch Hurley, Your Honor. I'd
23 like to be able to respond to that, briefly, if I may.

24 THE COURT: Just briefly.

25 MR. HURLEY: Okay. so just to correct something

1 for the record, I think Mr. Joseph said that all of the
2 three initial Sacklers' emails have been produced. That's
3 actually not right. David Sackler's emails include,
4 apparently, a large number that were maintained at a company
5 he founded called Moab, and those documents are not going to
6 be produced until September 1st. That's my understanding
7 what their agreement is. I'm sure they'll correct me if I'm
8 wrong about that.

9 We certainly didn't make an allegation against the
10 Sacklers with respect to what they're going to get away
11 with. Of course, I was just pointing out that there are
12 many victims and members of the public in general that are
13 very interested in this case and are watching it very
14 carefully, including, as I think from that article that I
15 cited in the New York Times, I think, is just one example,
16 but our investigation is underway, as Mr. Joseph just
17 pointed out.

18 It's our intention to continue and complete that
19 investigation. It is a complex investigation, but we are
20 staying focused, Your Honor, very closely on the claims at
21 issue. Those claims require an investigation of a series of
22 -- that took place over an extended period of time and they
23 do require an examination of a lot of material. Part of
24 what we're looking for and that hasn't come in yet -- again,
25 it's not just the additional members of the Sackler family -

1 - and this is crucial -- it's the IACs. I won't go over the
2 history of that again.

3 I know Your Honor doesn't want me to and I won't,
4 but the IAC discovery is also part of what is only now just
5 beginning and won't be concluded until October at the
6 earliest. The Committee, all we can do is communicate to
7 Your Honor how important, from the Committee's perspective,
8 and we believe from the perspective of all or almost all of
9 the creditors in these cases, it is to ensure that a
10 sufficiently comprehensive investigation is carried out and
11 we're going to keep trying to do that. Thank you.

12 THE COURT: Okay.

13 MR. TROOP: And, Your Honor, if I may, it's Andrew
14 Troop for the nonconsenting states. Your Honor, Mr.
15 Hurley's last -- I hope you can hear me, Your Honor --

16 THE COURT: Yeah, I can hear you fine.

17 MR. TROOP: -- clearly. Thank you. Mr. Hurley's
18 last point that this case is one of substantial import for a
19 number of reasons that requires a level of investigation
20 into conduct and answers that is driven by the public and
21 the public's need to know --

22 THE COURT: Can I interrupt you on that point?
23 Not that you're saying anything --

24 MR. TROOP: I don't think --

25 THE COURT: -- I don't agree with.

1 MR. TROOP: I don't think I get a vote, so go
2 ahead.

3 THE COURT: But I think that -- make sure I phrase
4 this correctly. Your clients and Mr. Eckstein's and his
5 colleagues' clients in large measure represent the public.
6 So, in that sense, I understand your point. I understand it
7 completely. I also understand that the Committee is the
8 fiduciary for all of the creditors of this company and
9 since, as I said, one can at least make some argument that
10 every American is a -- in some level of some conceivable
11 theory a creditor of this company, they also represent the
12 public.

13 What I find extremely frustrating, and I recognize
14 that your clients are a politician so they have to live in
15 this water, but I don't, and I want to make it clear. The
16 press, who in a number of totally irresponsible articles led
17 people who have truly suffered, because of the opioid
18 crisis, to believe that there is no investigation going on,
19 that this case's purpose is somehow to let the Sacklers get
20 away with it and that without the appointment of an examiner
21 there won't be an investigation, is just completely and
22 utterly misguided.

23 So, for anyone to believe that they should be
24 driven by such trash is just a big mistake. We cannot
25 muzzle the press, but certainly, people should understand

1 that what is being put out as if it was news is completely
2 false and should lead them to decide that they do not want
3 to buy or click on that publication in the future because
4 they cannot trust it to do the basic due diligence that any
5 reporter should do.

6 So, I don't want to hear some idiot reporter or
7 some blogger quoted to me again in this case. And you and
8 your client should not be guided by anything of that sort or
9 some misguided law professor who does not take the basic due
10 diligence that you would think he or she would want a first-
11 year law student to do to actually look at the actual
12 transcript and the record in the case before spouting off
13 about the need for an examiner, including completely
14 ignoring the appointment of a corporate monitor, the
15 commitment as part of the injunction to have a full account,
16 and the examinations that are going on.

17 Now, that's not my anger at you, Mr. Troop.
18 That's my anger at people just simply putting their hands
19 over their eyes and their fingers in the ears and purporting
20 to speak to people who have been harmed, who have had
21 children die, and stirring them up because it's click bait.
22 They should understand that they should stop buying those
23 publications and stop clicking on those sites.

24 MR. TROOP: Your Honor --

25 MAN 1: Your Honor --

1 MAN 2: Hey guys? Hey, guys, thanks a lot --

2 THE COURT: Mr. Troop was interrupted so -- have
3 the floor.

4 MR. TROOP: Thank you, Your Honor. Your Honor, as
5 you know, well before any of the items and issues that
6 you've identified, states were fulfilling their obligations
7 to pursue and, in that process, discover facts to support
8 claims of potential liability and as you know also, and as
9 Mr. Huebner repeated, the Debtors' plan here is -- continues
10 to be to pursue a path that will result at least in a
11 request for releases and for the Sacklers and others.

12 It is in that context, as you know, that we, the
13 nonconsenting states as well as others in the case have
14 really worked in an unprecedented fashion with the Creditors
15 Committee to identify ways that we can marshal -- no pun
16 intended -- assets, resources, and undertake the diligence
17 that well be required for, in my case, attorneys general to
18 decide to agree to what we expect will be a far ranging
19 release request or not and that the observations that I
20 think everyone has made, which are necessarily conflicting
21 in some ways, Your Honor, that there is a desire to move
22 things on as -- to move things on quickly, but there is a
23 reality that doing so is a large, complex, multifaceted,
24 multi-partied, multi-issued endeavor and that the point that
25 I think was being made -- and I don't think anyone really

1 can disagree with -- is that to balance these issues and
2 complexities requires the herculean efforts that I think
3 just about every party in this case has undertaken to -- for
4 mediation parties to proceed with mediation or us to work
5 through discovery issues which are not finally memorialized,
6 but I think will be with the Debtors, to get documents from
7 financial institutions, to get taxpayer ID numbers out of
8 the Sacklers, to facilitate that, just take a lot -- just
9 takes time, Your Honor, with everyone's diligence and really
10 very hard work and on a schedule that is agreed to.

11 I don't think anyone -- was agreed to between the
12 Committee and the Sacklers, that potentially doesn't have
13 discovery concluding until October 1, October 26, depending
14 upon how you want to think about those dates that, as Mr.
15 Hurley said, will require some deposition discovery,
16 appropriate deposition discovery. We're all very much
17 focused on that. The point is simply, it is a -- it's going
18 to be a hard push to keep to the timeline, to keep to a
19 timeline that, as a consensual plan, consensual, confirmable
20 plan on file, well in advance to use Mr. Huebner's words, of
21 the extended exclusivity date of December 10.

22 That doesn't take away from anyone's desire or the
23 effort they will undertake to do so, and I'm ascribing, in
24 this context, an assumption that everyone will work hard
25 towards those goals, but there may be disputes that you have

1 to decide along the way.

2 There are lots of things that could -- that will
3 likely come into play here despite everyone's best
4 intentions and efforts, and so, Your Honor, here, I think
5 Mr. Eckstein will talk for the three groups on the issue of
6 timing with this stage of mediation, but I think that the
7 fact that we all want to proceed today with the class
8 certification motion reflects our collective belief that
9 things have to move forward in the case, including in
10 connection with these motions and with mediation and that
11 we're committed to move forward quickly, but I don't want to
12 step on Mr. Eckstein's toes too much there.

13 And otherwise, that we're all working -- we really
14 are working together, Your Honor, more so than I've ever
15 seen in my 35 years of practice, amongst parties who might
16 not really have the same end results in the case -- of the
17 case in mind, at least not yet. So, Your Honor, unless you
18 have any further questions for me, that's all I have to say
19 on this.

20 THE COURT: Okay, thank you.

21 MS. BALL: Your Honor, Jasmine Ball from Debevoise
22 and Plimpton on behalf of the Mortimer side. I think it's
23 just important, given that people have been talking about
24 discovery and timing of discovery and that there's so much
25 that they still need to see, that we just include at least

1 the Mortimer side information along with the Raymond side
2 information, so that the other half of the Library of
3 Congress is actually noted. I mean, I think on the Mortimer
4 side, we've already produced nearly 1,150,000 pages with
5 respect to documentation and that's over 200,000 documents.

6 We've had over 200 attorneys and other persons,
7 both in the U.S. and Europe, doing this document review on
8 this timeframe for -- as requested by the UCC, and we're
9 currently reviewing an additional 200,000 documents that
10 will get produced in the next month to them and we've
11 collected ESI from over 50 email accounts and digital
12 devices already totally many, many terabytes of data at this
13 point and we've also produced priv logs that describe over
14 28,000 documents and that include lists of hundreds of
15 individuals who appear on the logs and as mentioned just
16 recently with respect to bank records, we've actually
17 reviewed over 23,000 pages of bank records that have already
18 come in from financial institutions that have been produced
19 in response to the nonconsenting states' subpoenas.

20 So, there's actually been a lot of data, both from
21 the Raymond side and the Mortimer side, the family's already
22 been produced, so we just want to make sure the record is
23 clear on that. We don't want anybody to think that people
24 aren't actually producing information for the other side to
25 review.

1 THE COURT: Okay. Thank you.

2 MS. BALL: Thank you, Your Honor.

3 MR. ECKSTEIN: Your Honor, would it be appropriate
4 for me to be heard? This is Kenneth Eckstein.

5 THE COURT: Sure.

6 MR. ECKSTEIN: I actually was hoping to speak
7 briefly about exclusivity, rather than simply discovery, if
8 I may, since there's a lot that's been put on the record, so
9 thank you, Your Honor. I know Your Honor reads the
10 pleadings and I'm sure it was observed that we were able, in
11 connection with this exclusivity motion, to file a pleading
12 not simply on behalf of the Ad Hoc Committee and there were
13 not multiple pleadings filed, but there was a single
14 pleading filed by each of the public groups that have been
15 acting in this case, the Ad Hoc Committee, the nonconsenting
16 states, and the MSGE.

17 THE COURT: I actually did a hand bump over that.

18 MR. ECKSTEIN: We've -- I wanted to make sure Your
19 Honor appreciated that. We've been listening. But it was
20 significant, Your Honor, because it does reflect that there
21 has been meaningful progress made in this case and I want to
22 underscore the fact that weeks and weeks of effort have been
23 put in since March by the three constituencies within the
24 public side to build greater consensus and very significant
25 progress has been made that we think is an important

1 building block to developing a plan.

2 That said, the pleading that we filed, I don't
3 believe, was precisely characterized by Mr. Hurley. I think
4 we tried to be practical and we tried to recognize the fact
5 that this is a complicated case where there's a lot that
6 still needs to be accomplished. There are actually three
7 separate workstreams that are going on simultaneously, Your
8 Honor. There is the very active mediation that is -- I can
9 represent, is consuming the time of scores of people on a
10 daily basis, including the mediators, and parties are --
11 from every constituency are working in good faith to try to
12 move this mediation forward.

13 We subscribe to the view that this mediation
14 should be coming to a conclusion. We don't think that it's,
15 at this point in time, necessary to impose a strict calendar
16 deadline, but we think that there should be real aspirations
17 that the mediation concludes within the next few weeks.

18 I think Mr. Huebner referred to the end of August
19 as sort of a goal, and I think that we generally view that
20 as being an appropriate view as to the time people will need
21 to try to reach resolution, but right now, we think that
22 holding parties' feet to the fire but without imposing
23 strict deadlines probably is the most productive way to
24 proceed and there may need to be more periodic and interim
25 check-ins to figure out exactly when this comes to

1 conclusion. I know this subject that Your Honor is thinking
2 about carefully.

3 At the same time, there is a lot of activity also
4 going on, on the question of the future of Purdue and the
5 business, and as Mr. Huebner indicated, there has been a lot
6 of constructive communications about the financial
7 projections, about the options, about what the priorities
8 are and the goals are and that has to also reach a
9 conclusion and all of the parties in the case have been
10 involved in those discussions as well on a very active
11 basis.

12 And there's a third leg, which has just gotten a
13 lot of attention, and that is the discovery that is going on
14 with respect to the Sacklers, and we did point out in our
15 pleading, the October 26th deadline which we know has been
16 negotiated and we suggested that as a practical matter, in
17 order for a plan, in our view, to be filed in the timeline
18 that Mr. Huebner identified, which we subscribed to, which
19 is to get a plan filed as early in the fall as possible,
20 practical steps would need to be taken to accelerate and
21 move up that deadline to the extent possible.

22 For example, if depositions are going to be needed
23 in order to complete this process, we would those
24 depositions to be scheduled as soon as possible. We should
25 know what dates in October those depositions are going to

1 take place. Parties don't need to wait until the end of
2 October to then start scheduling the depositions. The
3 documents are coming in. We heard those representations.
4 Depositions should be scheduled. They should take place and
5 they should be concluded so that that process can really
6 come to a conclusion or as close to a conclusion as possible
7 by the early, mid, or at latest, late part of October.

8 There is no reason why parties cannot continue to
9 work and fold all of these items into the plan process that
10 has to take place and we are very, very much of the view
11 that the plan should be coalescing and should be filed as
12 early as possible in the fall as we can. And at this point
13 in time, whether it's the beginning of October or the end of
14 October, I don't think we're yet ready to sort of put a pin
15 in, but we think that whatever building blocks need to be
16 taken in order to achieve the filing of a plan by October or
17 the latest, the beginning of November, needs to be put in
18 place and this is when we should get there.

19 And I believe that is the view of each of the
20 public entities, and I think that without in any way
21 minimizing the challenges of reaching a resolution that has
22 the support of the public claimants, the private claimants,
23 the Department of Justice, and ultimately is going to have
24 to be negotiated with the Sacklers, is a lot to be done.
25 But it is time to do that now and we are very, very

1 committed to making sure that the goals that Mr. Huebner
2 expressed are accomplished successfully over the next two or
3 three months that are on the calendar. So, thank you, Your
4 Honor, for listening to that statement. We hope that can be
5 achieved.

6 THE COURT: Okay, thank you. All right. As I
7 noted, I had given a fair amount of thought to how to move
8 this case forward and have been over the last couple of
9 months. I, of course, don't know what's going in the
10 mediation, although I've heard from the parties at these
11 omnibus hearings as well as statements that they've made in
12 pleadings before me. I have, of course, been a mediator on
13 a number of cases with difficult plan related issues, and I
14 know that there are two very talented and experienced
15 mediators in this case.

16 I think that under the circumstances, a working
17 deadline is important for the conclusion of the mediation.
18 Having said that, I think it's also important to give the
19 mediator sufficient flexibility to let me know that while
20 we're very close on something, extend it a little bit, or
21 not, and frankly, if one sets a working deadline it doesn't
22 mean that the mediators can't say we're done three or four
23 weeks before that.

24 But it does seem to me, given the duration of the
25 mediation and the issues involved, that the end of August is

1 a good working date to have as a date in everyone's mind,
2 including the mediators, as to when the mediation should be
3 concluded, at the Monday, the 31st.

4 We have the August omnibus date on Wednesday, the
5 26th. Obviously, if the parties want to give me an update
6 then and say, no, we're -- we think another couple weeks or
7 another week is appropriate, by all means, that makes sense
8 and I will defer to them and to the mediators. But I think
9 that that amount of time should be sufficient for the
10 parties who are here, well represented, thoughtful, and have
11 been engaged, I can tell, in a very meaningful way already
12 for a number of months to reach an agreement.

13 I sincerely hope that that's an agreement that
14 involves and includes all of the mediation parties, but
15 having, again, served in that role many times, I know that
16 sometimes you can't achieve that. Maybe you get all but
17 one, for example. I'm not expecting complete consensus,
18 necessarily. That's to be desired, and obviously, there's a
19 risk if you're a hold-out, as things move forward in a
20 bankruptcy case. So, I would urge all the parties, as I did
21 last month, to put aside the perfect and agree on the good
22 and move on with things, to the next stage in this case.

23 As far as the other two workstreams that Mr.
24 Eckstein referenced, it appears to me that the financial
25 workstream, i.e., the projections and future of the Purdue

1 business, is something that the financial advisors and the
2 bankruptcy lawyers should be able to work out in plenty of
3 time to negotiate a plan, and frankly, could probably do so
4 in September.

5 The hardest part of this case, and it always has
6 been, is dealing with the claims against and potential
7 contribution by and release of, for want of a better term,
8 the Sacklers.

9 I have made it crystal clear since the beginning
10 of this case that the due diligence behind an agreement with
11 the Sacklers that would be embodied in a plan is going to be
12 of an unusually high level in order to achieve consensus in
13 this case, just given the visibility of the case, but I'm
14 not talking about visibility to members of the press who
15 want to get clicks, but legitimate concerns that public
16 officials and creditors have about the quid pro quo for
17 relief.

18 The discovery here is, I think, extraordinary for
19 a bankruptcy case. One of the reasons that settlements are
20 so highly accepted in bankruptcy cases is the realization
21 that there's not enough money to go around and that with
22 reasonable due diligence, parties should be able to decide
23 how to allocate it and settle claims and causes of action
24 without incurring the full cost of litigation.

25 So, I understand the work that has been undertaken

1 here, and in some level, I'm responsible for imposing it
2 beyond the normal level of discovery that would be expected
3 in a bankruptcy case, even a very large bankruptcy case.
4 But at the same time, considerations pertaining to
5 bankruptcy cases to apply here, particularly in the desire
6 of everyone to get a plan confirmed so that the
7 consideration to the creditors can begin to flow.

8 So, I guess the best that I can say here is,
9 largely to paraphrase Mr. Eckstein's remarks, the parties
10 should be moving forward to analyze what's coming in from
11 the Sackler parties and anticipating potential bottlenecks
12 and should act now to address those potential bottlenecks.
13 If you're anticipating important privilege issues, surface
14 them now. Schedule depositions now.

15 Think about whether you can actually have the
16 deposition now, with the agreement that you would supplement
17 it based on the last bits of discovery that come in in
18 October, so that you will be ready to negotiate in late
19 October and move quickly to a plan that can be filed and
20 heard by the end of the year, if possible. It's all of your
21 money. At some point, I'm just urging you to husband your
22 resources so that it gets out faster.

23 I had in my notes that I don't want to see plan
24 confirmation any later than February. It should be before
25 then, and I think with the talent of the parties here, it

1 can be, but you need to continue to press and continue to
2 evaluate on the bankruptcy side, you need high level adult
3 supervision to decide when you can start negotiating.

4 Obviously, you don't need every document in before
5 you can start doing that. So, I'm not setting any
6 particular deadline for negotiations of a plan, but the
7 parties should be focusing on getting to a point with the
8 third workstream here, the Sackler workstream, to be able to
9 do that in late October and should, more importantly, look
10 to end that process with a plan being filed in November or
11 early December, if not before.

12 Your constituents, ultimately, will thank you for
13 that. It doesn't matter what some numbskull op-ed writer
14 puts in or a misinformed reporter puts in. It matters
15 what's laid out on the record, ultimately. So, on the
16 exclusivity motion, I'll grant that motion and you can
17 submit it to chambers.

18 So, going back to the mediation, I'm serious about
19 this. It's important for all the parties who are engaged in
20 that mediation to put your best foot forward and get this
21 done by the end of August. It may well not go beyond then
22 and you may lose your chance, so please, a lot of money has
23 been spent on this. A lot of effort has been spent on it.
24 You have two very talented mediators. Use the opportunity
25 to conclude, not as just one more step in a decision tree.

1 Usually, when people draw those types of decision trees,
2 they end up cutting off the branch that they're sitting on.
3 End it by the deadline, by reaching an agreement.

4 Okay. That probably took a lot longer than people
5 were expecting, so why don't we move on to the item on the
6 agenda?

7 MR. HUEBNER: Thank you, Your Honor. I was going
8 to say, that concludes the first uncontested matter, which
9 is exclusivity. Obviously, I'm sure there will be lots
10 (sound drops). Number two is the dismissal agreement and
11 Your Honor, let me just sort of apologize. Because the
12 binders were so voluminous and had been hand delivered,
13 things move around a little bit and we didn't want to ask
14 the Court or the (sound drops), so Mr. Robertson, let me ask
15 you, number two, the dismissal agreement motion, is that
16 still number two, and is it your podium?

17 THE COURT: Number two.

18 MR. ROBERTSON: That is correct on both regards.

19 MR. HUEBNER: Okay. I'm off.

20 MR. ROBERTSON: So, thank you, and thank you, Your
21 Honor. For the record, Christopher Robertson, Davis, Polk,
22 and Wardwell, on behalf of the Debtors. The second item on
23 today's agenda is the Debtors' motion to approve a dismissal
24 agreement with Intellipharmaceutics. That filing is at
25 Docket No. 1327. Very briefly, pursuant to the dismissal

1 agreement, patent litigation between the parties that is
2 pending in the Delaware District Court will be dismissed
3 without prejudice. The motion is uncontested. Unless Your
4 Honor has any questions, we would ask that the motion be
5 granted.

6 THE COURT: Okay. I guess my only question here
7 is the consideration that the Debtors are providing here, I
8 gather, is a tradeoff for the other side's agreement in
9 Paragraphs C, D, and F not to take certain actions, correct?

10 MR. ROBERTSON: That's right, Your Honor, and also
11 it is the advice from outside IP counsel that the agreement
12 is needed for both parties to dismiss the current action.
13 In other words, this is not something that Purdue could
14 dismiss unilaterally and so --

15 THE COURT: Right.

16 MR. ROBERTSON: -- as well.

17 THE COURT: No, I understand that, and, in
18 essence, the Debtors are paying a portion of what they
19 would, in any event, be paying in additional litigation
20 costs to get a result at least on an interim basis, that
21 they would maybe only get if they won after spending all
22 that money.

23 So, it appears, to me, that the settlement is fair
24 and reasonable, taking into account the litigation risks,
25 costs, and benefits of the settlement, so I'll approve it.

1 You can email the order to chambers and it'll be entered.

2 MR. ROBERTSON: Thank you, Your Honor, and I will
3 cede the podium back to Mr. Huebner.

4 THE COURT: Okay.

5 MR. HUEBNER: So, I actually think I'm going to
6 sort of re-cede to Mr. Preis because motions three and four
7 or Items 3 and 4, UCC's motion to shorten time and the UCC's
8 "clinical contributions motion" (sound drops) read on an
9 order of operations. Mr. Preis, assuming you're ready, here
10 we go.

11 THE COURT: Okay.

12 MR. PREIS: Good afternoon, Your Honor. Arik
13 Preis from Akin, Gump, Strauss, Hauer, and Feld again, on
14 behalf of the Official Committee. On July 10th at docket
15 No. 1373, we filed a motion seeking entry of an order
16 clarifying the Debtors' obligations with regard to certain
17 post-petition political contributions. We also filed at
18 Docket No. 1372a motion to shorten the time to hear such
19 motion by one day.

20 THE COURT: No, no. That -- I'm going to deal
21 with the motion to shorten time. That's only under the case
22 management order. There's sufficient notice on this motion,
23 generally, under the case management order. It would -- one
24 would be heard on the next omnibus date, but I have no --
25 I'll grant the motion to shorten time.

1 MR. PREIS: Thank you, Your Honor. That's what I
2 was going to ask.

3 THE COURT: Right.

4 MR. PREIS: Okay. Specifically, the first time we
5 learned about these political contributions was three days
6 before we filed the motion, through an expose piece -- I
7 know you don't want to hear about the press -- that the
8 Debtors had made a number of contributions after the
9 commencement of the Chapter 11 cases. We explained those
10 contributions in our motion and I really want to stress
11 that, to be clear, as we put in our original pleading, we
12 did not file the motion to launch a morass of litigation.
13 In fact, we did it to prevent it.

14 We spoke to quite a few parties before we filed
15 the pleading and we tried our best to make sure that this
16 didn't get out of hand. We fully understand the Debtors
17 position -- I think Mr. Huebner may want to say something
18 about that when I'm done -- that these contributions were
19 important to Purdue's ongoing business, and we understand
20 their belief that the contributions were ordinary course.

21 But for the reasons we put in our motion, we felt
22 strongly that the issue needed to be brought to light, for
23 the benefit of all creditors and the public at large, given
24 the highly unique and political circumstances of these
25 cases. Again, our issue here is one of process. The

1 Official Committee is very appreciative that both prior to
2 and following the filing of the motion the Debtors worked
3 with us in an effort to resolve the issues surrounding the
4 political contributions.

5 In fact, although we did not -- specifically did
6 not request in our motion that about -- we did not request
7 that any parties return the money or that the Debtors ask
8 for any of the money back. We were pleased to see that the
9 Debtors requested that the two attorney general
10 organizations, the Democratic Attorney General Association
11 and the Republican Attorney General Association, return the
12 funds, which they did. The two governors' associations, the
13 Republican Governor Association and the Democratic Governor
14 Association, also returned the payments that had been made
15 to them.

16 In total, \$185,000 was returned to the Debtors.
17 Further to these efforts, and as I'd mentioned, we have been
18 speaking to the Debtors quite a bit and we also -- for
19 transparency, we also did speak to Secretary Vilsack as the
20 independent monitor. We are pleased to report that we have
21 reached consensus with the Debtors regarding the requested
22 relief and therefore, subject to entry of an order modifying
23 the joint proposal, we're satisfied that the relief that we
24 had requested has been consensually resolved.

25 I'd like, at this point, to read the proposed

1 resolution in respect of the motion for Your Honor. Is that
2 okay, or would you like to hear --

3 THE COURT: Well, is it -- I mean, I have the form
4 of order. Is it different from the order?

5 MR. PREIS: Yes, it is.

6 THE COURT: Okay, yeah, you should do that, then.

7 MR. PREIS: Okay. My question is, did you want me
8 to go through that or did you want to hear from the Debtors
9 first? We had worked out that I would read --

10 THE COURT: Well, if it's agreed, if it's agreed,
11 why don't you read it and then I can hear from the Debtors
12 to the extent they want to say anything further.

13 MR. PREIS: Okay. "Number one, for the duration
14 of the Chapter 11 cases, the Debtors will not make any
15 payments to Democratic Attorneys General Association, the
16 Republican Attorney General Association, or any other 527 or
17 other organization, the primary membership or function of
18 which is focused on attorneys general. For all other 527
19 organizations and for the Chapter 11 cases, the Debtors will
20 agree to a \$25,000 cap per organization and an aggregate cap
21 of \$125,000 each for the duration of the Chapter 11 cases
22 asked in further order of the Court, plus de minimis
23 incidental costs such as conference registration fees.

24 "For the four existing 527 organizations to which
25 the Debtors contribute, which are not organizations whose

1 primary membership or function is focused on attorneys
2 general, and those four are the Democratic Governors
3 Association, the Republican Governors Association, the
4 Republican State Leadership Committee, and the Democratic
5 Legislative Campaign, the Debtors will agree to make such
6 payments on the customary renewal schedule, again, no more
7 than \$25,000.

8 "For these four groups, renewal payments are made
9 between November 1st and December 31st, 2020 and therefore
10 no payments will be made to these four groups before
11 November 1st of this year, though it is possible some of the
12 payments could slip into 2021. For any 527 organizations
13 that Purdue wishes to join or contribute to beyond these
14 four, the following rules will apply.

15 "First, any such contribution will be subject to
16 the \$25,000 per organization and \$125,000 aggregate case
17 cap," which I mentioned earlier. "And two" -- and this is
18 the profit point that was important to the Committee --
19 "before making contributions to such organization, the
20 Debtors will provide notice on the docket of their intent to
21 make the payment 30 calendar days before such payment is
22 made, including the identify of the institution and the
23 amount of the proposed contribution."

24 And finally, for the avoidance of doubt, the
25 Debtors were good enough to provide us quite a bit of

1 diligence as to other contributions they make to other
2 associations and organizations such as trade associations,
3 nonpolitical organizations, and 501(c)(3) nonprofits. For
4 all of those, there will be -- those entities will not be
5 subject to any caps or restrictions.

6 We believe, and I believe the Debtors believe as
7 well -- and I'll let Mr. Huebner speak for the Debtors --
8 that this outline, this compromise, this solution,
9 represents a reasonable resolution of our motion that
10 ensures transparency without imposing potentially harmful
11 restrictions on the Debtors business.

12 Before I ask Mr. Huebner to speak, do you have any
13 questions for either myself or Mr. Huebner about the
14 resolution?

15 THE COURT: And is that going to be embodied in an
16 order, Mr. Preis?

17 MR. PREIS: Yes. We --

18 THE COURT: Okay.

19 MR. PREIS: -- intend on filing an order so that
20 it's clear on the docket for all parties in the case.

21 THE COURT: All right. Okay. No, I don't have
22 any questions.

23 MR. HUEBNER: Good afternoon again, Your Honor.
24 Mr. Huebner for the Debtors. I can hopefully be brief.
25 Your Honor, you've already heard, we reached a resolution.

1 We actually reached that resolution frankly -- really,
2 almost immediately after learning of the issue. I
3 appreciated Mr. Preis' acknowledgement that we moved
4 extremely quickly to get an understanding of this and to
5 come up with something reasonable under these very unusual
6 case circumstances.

7 Because, obviously, if you lose the sound of a
8 good name, you lost everything, I do need the Court to have
9 a little bit of context on some things because there was a
10 filed motion that said some other things, and so I think a
11 little bit of context very quickly is important. The
12 Committee, obviously, we're resolved and so they're not
13 seeking a resolution and their motion said they were not;
14 although, it was a (indiscernible) issue, that maybe these
15 payments were not in the ordinary course.

16 Just to give you a sense in how, sort of, we think
17 about things on the Debtors' side, because this is important
18 to us, let me just quickly explain. In operating their
19 business, the Debtors, like many, probably most other major
20 pharmaceutical and other companies, have joined established
21 political organizations like this for many years. This is
22 not done for improper purposes. It's done by many large
23 corporations because involvement in these organizations is
24 thought to provide them, along with hundreds of other law
25 firms, some of whom are on the phone today, corporations and

1 other businesses with important insight and potentially
2 (sound drops) into legislative and regulatory changes that
3 are critical to the operation of the Debtors' business, and
4 most importantly, to the preservation of value for all
5 stakeholders.

6 While the post-petition membership payments were
7 not substantial and you just heard me finish begging for 40
8 minutes to get this case out faster to save every dollar we
9 can, they also were consistent both with years of Purdue's
10 prepetition memberships in most events were far lower than
11 payments made by the dozen -- by dozens of the Debtors' peer
12 pharmaceutical and other companies. Hundreds of companies
13 contribute to these organizations every year, including
14 pharma companies, and in some cases, their membership levels
15 are multiples of the Debtors who often joined at the lowest
16 or second lowest tiers.

17 But Mr. Preis is right, and was right, that being
18 comfortable with the payment's legality but not in the
19 inquiry, because lots of things matter besides just, did
20 this need Court approval or did it not. Thus, as we've
21 already discussed, literally within minutes of the Committee
22 raising the concerns, which was a call from Mr. Preis and
23 Ms. Brauner to me, the Debtors jumped right in and by that
24 night, we were already pumping out information about exactly
25 the scope of these and other payments. No one took the view

1 that this was not a fair issue to raise and we immediately
2 offered go-forward limitations that, I think, look an awful
3 lot like the final deal and those were made within something
4 like 36 hours of a standing start, having never known about
5 the issue before.

6 And so, I do want to give the Court and all
7 parties comfort, because this case is very charged, that the
8 Debtors are very sensitive to issues like this and when
9 they're brought to their attention, we work very hard and
10 fast. One last thing, Your Honor, which I think is also
11 important to note, because obviously, the notion that a
12 \$1,000 527 contribution now needs 30 days' advance notice on
13 the docket does sort of suggest things about that, even
14 though, obviously, they're very typical and so to give the
15 Court and all parties some comfort, let me just very quickly
16 explain what the Debtors have actually don't with political
17 contributions in the last 18 to 24 months, and they're just
18 five quick points.

19 One, as of October 2018, the Debtors ceased all
20 direct local contributions to all political candidates.
21 Two, since June 2018, the Debtors' government affairs
22 department has been -- has reduced its personnel by 55
23 percent in light of its radically lower level of activity
24 and involvement. Three, the Debtors have not retained any
25 new contract lobbyist since 2018.

1 Four, there was a PAC, a political action
2 committee, earlier on, but it was shut down prior to the
3 petition date. It's made no expenditures since July 12,
4 2019 except to disburse the remaining funds to nonprofits,
5 which is what you have to do under federal finance campaign
6 law if you're not going to give it out for political
7 purposes for which the PAC was originally done and
8 technically, the final ministerial act after the last check
9 cleared happened on September 16th, 2019, one day after the
10 petition date, when the PAC was formally and definitively
11 shuttered.

12 And then last, as Your Honor knows, we have a 13-
13 page extremely dense, extremely long self-injunction that we
14 requested that was negotiated for weeks with many parties in
15 this case back in October, November, and December, and as,
16 of course, note -- the Court noted, it was the Court's own
17 suggestion, we retained a monitor -- an august monitor, to
18 give parties yet further comfort that the Debtor would
19 operate within the bounds of their obligations under the law
20 more generally and under the terms of the self-injunction
21 more particularly.

22 So, that's just a little bit from our side. I
23 just -- I don't want anybody to believe -- which would be
24 totally untrue, that this is some tip of an iceberg. Quite
25 the contrary, these payments, we believe, were lawful,

1 whether with perfect hindsight and all the right people
2 talked about it and thought about it and had they all ben
3 asked, they would've still been made, hard to say. Doesn't
4 really matter.

5 But the short answer is, we immediately reached an
6 agreement on the go forward, which as you see, is very, very
7 limiting compared to what we think every one of our peers
8 does, and we were happy to do so because this case is
9 unusual and perceptions matter and appearances and propriety
10 matter and, frankly, it was just the right answer. So, the
11 Committee wants to file pleading. That was okay. The
12 Committee asked us not to file a responsive pleading. We
13 lived with that. The Committee wants an order. That's
14 okay.

15 These are important issues, important to many, and
16 we're delighted that leaving the paperwork aside, we were,
17 in essence, able to resolve it about two business days or
18 three business days after learning of the issues. I mean,
19 we sort of curly-Q submitted the final contours (sound
20 drops) for a few days, but as I said, an offer a lot like
21 what Mr. Preis just described was actually made, I think,
22 really very quickly as it should have been, because it was
23 an issue that attracted a lot of attention from various
24 parties.

25 So, I would like to thank Mr. Preis, by the way,

1 for his courtesy both in working with us very quickly, and
2 in acknowledging both in pleading and today that we did move
3 quickly and work it out as efficiently as we knew how. So
4 that's all I have --

5 THE COURT: Okay. All right, thank you. I will
6 grant the motion as it's been resolved. In an ideal world,
7 one would not have any political contributions by
8 pharmaceutical or medical industry companies, frankly, but
9 this is far from that world. Just the other day, I was
10 affirmed on an opinion where a lobbyist for a healthcare
11 company earned \$10 million for lobbying for two bills.

12 But it appears to me that the Debtors and the
13 Committee are both comfortable that in today's world, this
14 result doesn't put the Debtor at a commercial disadvantage,
15 and given that and given the other concerns of this case,
16 this is clearly a fair resolution.

17 By the way, Mr. Preis, I'm perfectly happy with
18 this type of reporting. This is what journalist should do.
19 I just wish that more of them would do it as to the money
20 that goes into Congress and other sources and would go to
21 NY. So, you can email the revised order to chambers.

22 MR. HUEBNER: Thank you, Your Honor.

23 MR. PREIS: Thank you, Your Honor.

24 MR. PREIS: That brings us to No. 5, which I think
25 is still resolved, which is the Canadian litigation class

1 stipulation. At the risk of being slightly embarrassed, Mr.
2 Robertson, is that you again or Mr. Baloch? I know he's
3 sort of (sound drops) guy in general, but I think it's
4 yours.

5 MR. ROBERTSON: That is me again. So, thank you,
6 Your Honor. Once again for the record, Christopher
7 Robertson, Davis, Polk, and Wardwell on behalf of the
8 Debtors. The final uncontested item on today's amended
9 agenda is Item No. 5, the Canadian litigation class
10 stipulation. The stipulation permits class counsel to file
11 a patient class proof of claim. The patient class proof of
12 claim must be solely in respect to claims subject to a
13 conditional settlement in Canada, and the patient class
14 proof of claim will be null and void if that settlement is
15 ultimately not approved by the requisite Canadian Courts.

16 The classes in the actions at issue have been
17 conditionally certified in Canada, solely for purposes of
18 implementation of this settlement. The agreement to permit
19 the patient class proof of claim is solely for the purpose
20 of administrative convenience, and neither the stipulation
21 nor the filing of any patient class proof of claim
22 constitutes an admission of any fact or of any liability
23 with respect to any claim or in any way prejudices the
24 rights of the Debtors or any other party subject to the
25 allowance amount and/or priority of any claim, including any

1 patient class proof of claim.

2 Your Honor, Paragraph 6 of the stipulation is very
3 clear on this point. The original stipulation was filed on
4 presentment on June 30, and we received an objection from
5 the Canadian government objectors on July 10. The Debtors
6 and class counsel, party to the stipulation, have agreed to
7 revisions to the stipulation that address the issues raised
8 in that objection. An amended and restates stipulation was
9 filed yesterday afternoon at Docket No. 1498.

10 The Canadian government objectors have confirmed
11 they are not contesting entry of the amended and restated
12 stipulation, only because the revised stipulation addressed
13 their concerns, and on the assumption that there will be no
14 further material revisions to its form.

15 There are no outstanding objections to the amended
16 stipulation. Rather than walk through the agreement, which
17 is unopposed and which I'm sure Your Honor has reviewed in
18 detail, I would pause to ask Your Honor if Your Honor has
19 any questions about the stipulation generally or the changes
20 in the amended and restated stipulation filed yesterday.

21 THE COURT: Well, I have two questions. First, as
22 I understand it, if the class settlement ultimately is
23 approved in Canada, the money to fund it is coming from a
24 non-Debtor Canadian entity, correct?

25 MR. ROBERTSON: That's correct.

1 THE COURT: It's not coming from these Debtors?

2 MR. ROBERTSON: That is correct.

3 THE COURT: So the proof of claim is just simply
4 to facilitate the overall resolution, which includes the
5 release, which would include these Debtors?

6 MR. ROBERTSON: That is correct.

7 THE COURT: Okay. And then, I guess, it's less a
8 question for you than -- looking at the hearing dashboard,
9 but there are a lot of people on it. Is there anyone on for
10 the Canadian government entities from Phillips Lytle?

11 MR. KARAVOLAS: Yes. Good afternoon, Your Honor.
12 Nickolas Karavolas, Phillips Lytle, for Her Majesty the
13 Queen in right of the province of British Columbia and the
14 other Canadian government objectors.

15 THE COURT: Okay, so if I am right, then, that the
16 revised stipulation resolves your clients' objection?

17 MR. KARAVOLAS: That's correct, Your Honor.

18 THE COURT: Okay.

19 MR. KARAVOLAS: The amended stipulation addresses
20 the concerns that were raised by the objectors, and they no
21 longer object to entry of the stipulation, under the
22 assumption that was raised by counsel.

23 THE COURT: Okay, very well. In light of that, I
24 will grant the motion which, as noted, is now unopposed.
25 The only objection has been resolved by clarifying the --

1 MR. FARRELL: Sir, I apologize for interrupting.
2 Mathew Farrell from Alberta. I'm on for the City of Grand
3 Prairie in respect of one of the issues in Canada, the -- in
4 addition to claims by the Canadian government, there are
5 also claims which have been filed in respect of class
6 actions on behalf of Canadian cities. I'm wondering how
7 best to deal with the issues regarding filing of claims for
8 those cities on a class-wide basis, as opposed to
9 individually, noting that the time for filing is fast
10 approaching. I wonder if that might be --

11 THE COURT: It's a different point.

12 MR. FARRELL: I understand.

13 THE COURT: This motion is really not dealing with
14 claims in this case. It's really dealing with approval of a
15 settlement agreement that would call upon a class claim to
16 be filed in this way -- in this case by the Canadian class
17 parties, so I'm afraid I'm just going to have to ask you to
18 figure that out on your own.

19 MR. FARRELL: All right, sir.

20 THE COURT: But as far as the motion before me,
21 I'll grant the motion. The settlement is clearly reasonable
22 as far as the Debtors' estate is concerned and as I noted,
23 the one objection has now been resolved with the
24 clarification of the amended stipulation that the Canadian
25 governmental entities' rights in the Canadian -- put is

1 differently. I'm not blessing a class action settlement
2 that somehow binds the Canadian entities, let's put it that
3 way, the Canadian governmental entities.

4 That's, I think, a shorthand way of summarizing
5 the agreement that resolved the objection. So, the Debtors
6 can email a version of the stipulation. Are you going to
7 have it just so ordered or you going to have a separate
8 order?

9 MR. ROBERTSON: Just so ordered, Your Honor.

10 THE COURT: Okay, so you can -- that's fine. You
11 can just send that in with the so ordered line on it, and it
12 will be granted.

13 MR. ROBERTSON: Thank you, Your Honor. That
14 concludes the uncontested portion of the agenda. At the
15 risk of misdirecting you, I believe I'm ceding the podium to
16 Mr. McClammy.

17 THE COURT: Okay. Very well, thank you.

18 MR. MCCLAMMY: Good afternoon, Your Honor. Jim
19 McClammy of Davis, Polk, and Wardwell, LLP, on behalf of the
20 Debtors. I believe that brings us to the portion of the
21 contested matters dealing with the class claims motion. As
22 Your Honor is aware, the Debtors are not the movant, but
23 we've asked for your direction how best to proceed. I
24 believe the next item up is the motion to shorten notice.

25 THE COURT: Well, I know that is the next item on

1 the agenda and that's dealing with the West Virginia NAS
2 claim motion, but I would like to move first to the request
3 by the Official Creditors Committee, and I gather from not
4 only that response by the Committee and request, but also by
5 filings by at least some of the movants, that the
6 Committee's request is joined in by the movants to adjourn
7 the hearing on all of the class motions on the terms of the
8 order proposed by the Committee, which is attached to its
9 response and request for adjournment, which is dated July
10 16.

11 Obviously, if I adjourn the matter, or the
12 matters, then we don't need to go further with a hearing on
13 the objections, which I appreciate have been extensively
14 briefed, but I think we should deal with the adjournment
15 request first.

16 MR. MCCLAMMY: Pertinent, Your Honor, and having
17 had the papers, would you like to hear from the Debtors and
18 the others opposing adjournment, or would you like to hear
19 from the moving parties first?

20 THE COURT: Well, I've heard -- I mean, I've read
21 the, obviously, the Committee's response and request for
22 adjournment. I would like confirmation. Is there any
23 movant that does not support the request for adjournment on
24 the terms laid out in the Committee's response and request
25 for adjournment?

1 MR. PREIS: Your Honor, can --

2 MR. MCCLAMMY: Oh, go ahead.

3 MR. PREIS: I did actually -- sorry, this is Arik
4 Preis from Akin, Gump, Strauss, Hauer, and Feld on behalf of
5 the Committee. I did actually ask the Committee -- sorry,
6 the nonconsenting states, the consenting states, the
7 Debtors, and all the movants if they had changed their
8 positions, and no one had changed their position. All the
9 movants continue to want, to be okay, with adjournment, and
10 the objecting parties continue to want to press forward with
11 their objections.

12 THE COURT: Okay, and that includes -- among all
13 the movants, it includes the West Virginia NAS movant?

14 MR. PREIS: It does.

15 THE COURT: Okay. All right. So, again, I have
16 read your pleading and I haven't really gotten responses to
17 it, so I think I would take Mr. McClammy up and hear from
18 the Debtors and those who have objected to the class
19 certification class claim motions, just on the issue of
20 whether I should adjourn this matter or not.

21 MR. PREIS: Your Honor, before they -- again, this
22 is Arik Preis from Akin, Gump, Strauss, Hauer, and Feld.
23 Before they go, will I have an opportunity to respond to
24 that?

25 THE COURT: Yes. Sure. Absolutely.

1 MR. PREIS: Thank you.

2 MR. MCCLAMMY: Thank you, Your Honor. Again, Jim
3 McClammy of Davis, Polk, and Wardwell on behalf of the
4 Debtors. With respect to the request to adjourn these
5 motions, the Debtors have spent a lot of time thinking about
6 that and how that impacts their goal of moving these cases
7 forward, and as you've heard already today, the Debtors are
8 very much concerned with and committed to moving these
9 Chapter 11 cases forward expeditiously and efficiently as
10 possible toward a consensual plan of reorganization, where
11 the entire value of the estates is turned over to allow
12 claimants and the Debtors' assets are devoted to addressing
13 and ameliorating the opioid crisis.

14 And I think the mediation moving forward in a way
15 that has clarity with respect to these class claims issues
16 at this stage is one of those things that it would be
17 helpful to have resolved, rather than simply hanging out
18 there for a period of time. And it may well be, as some of
19 the movants have noted, that the mediation has taken longer
20 than expected and that they filed their claims because the
21 bar date -- or they filed their motion because the bar date
22 was rapidly approaching.

23 The fact is though, Your Honor, with respect to at
24 least that last point, all but the school districts had
25 filed -- did not file, I should say, their motions before

1 the June date that was originally going to be the bar date,
2 and have now filed, many of them, within just 14 days of
3 today's hearing date, which is just seven days before the
4 end of the bar date. The timing is not one that is of our
5 own making, but is one that we find ourselves left with,
6 nonetheless.

7 With respect to the issues that are raised in the
8 motion, certain of those motions are nothing more than, in
9 many ways, an eleventh-hour attack of the adequacy of the
10 Debtors' robust claims noticing program. And interestingly,
11 many of the movants' assertions with respect to the notice
12 program contained in their class claims motion deemed them
13 all but abandoned, perhaps in their replies, but having some
14 certainty around the bar date and this concept of which
15 claims are or are not going to be in this case, we believe,
16 is very much an important matter for consideration.

17 THE COURT: What if I told you that the second
18 prong of the analysis, if I got to it, could not be decided
19 today on today's record, in any event?

20 MR. MCCLAMMY: The second prong of the analysis as
21 to whether or not the class claims should be allowed, Your
22 Honor?

23 THE COURT: Right, but the true Rule 23 analysis,
24 the Musicland analysis, the second prong of that.

25 MR. MCCLAMMY: Your Honor, I believe on the

1 Musicland factors, at least in our view, we think that the
2 record is sufficient with respect to all three factors,
3 whether the classes were certified prepetition, the impact
4 that these cases, the class certification might have or that
5 the use of the class mechanism is there and whether or not
6 they've received adequate notice of the bar date. The
7 record has been before this Court already. We believe that
8 all three of the Musicland factors are there.

9 To the extent that the Rule 23 factors have been
10 addressed at all, I think, is more informative of whether or
11 not, ultimately, a class might be certified and is helpful
12 to the analysis, but I think under the three Musicland
13 factors, at least we would argue, that there's a sufficient
14 record for that. Certainly, if Your Honor has particular
15 questions, be happy to address that.

16 THE COURT: Okay.

17 MR. PREIS: May I respond, or did you want to hear
18 from the other objectors?

19 THE COURT: No, why don't I hear from everyone --

20 MR. PREIS: Okay.

21 THE COURT: -- side of this issue, first?

22 MR. ECKSTEIN: Your Honor, it's Kenneth Eckstein
23 from Kramer Levin. I'm happy to speak to the issue next, if
24 that's appropriate.

25 THE COURT: Okay.

1 MR. ECKSTEIN: So, Your Honor, we did not submit a
2 pleading in response to the Committee's submission, which
3 was a -- which included a request for adjournment, because
4 we understood that the Court was not looking for any
5 additional pleadings beyond the pleadings that were
6 submitted on the motions themselves, so to the extent we did
7 not provide something in writing, hopefully that was
8 consistent with the Court's expectation.

9 THE COURT: Yeah, it was. Thank you.

10 MR. ECKSTEIN: But, Your Honor, I don't want the
11 lack of a pleading to be taken as an absence of a view on
12 this issue. This is -- we understand the significance of
13 the motions and, obviously, the motions have captured a
14 great deal of energy. The fact of the matter is, the timing
15 of the motions really dovetails quite directly into much of
16 the colloquy that has taken place over the first hour-and-a-
17 half or two hours of today's hearing, and most of the points
18 that I would start with, Your Honor, I think are fully
19 appreciated by the Court.

20 This case is a year old or is about to be a year
21 old in September, and as Mr. Huebner indicated in connection
22 with exclusivity, we've incurred nearly \$200 million of
23 administrative expenses to date, and the case will continue
24 to incur very substantial expenses on a monthly basis going
25 forward. The Court has approved and put into place one of

1 the most robust and comprehensive bar dates and notice
2 processes ever undertaken in a Chapter 11 case and the
3 Debtor expended more than \$24 million in connection with
4 that noticing process, and the Court entertained an
5 extension of the bar date several weeks ago and moved the
6 date out from the end of June to the end of July.

7 And as Your Honor knows, claims are expected to be
8 filed a week from today, and parties have expended a great
9 deal of energy complying with the bar date order and
10 preparing proofs of claim.

11 This is a case where we have more than 10 Ad Hoc
12 Committees representing hospitals, third-party payors, NAS
13 Babies, personal injury claimants, school districts, local
14 governments, states, and the movants in these class motions
15 actually all have seats on the Unsecured Creditors Committee
16 as either members or as ex officio members, and each group
17 has participated actively in a mediation that has proceeded
18 with a great deal of energy for the past five months and, as
19 we have discussed today, is near completion.

20 We have a very active and mature prepetition
21 litigation with an MDL where not a single class had been
22 certified. And as Your Honor knows, each of the
23 constituencies that have an interest in this case, have
24 participated from day one of this case and have appeared at
25 hearings, participated in connection with all of the major

1 proceedings that went on in this case, and including
2 participated quite actively in the development of a very
3 complex bar date order that contemplated how each of the
4 different constituencies were going to file proofs of claim.

5 It came as a surprise that we were confronted with
6 five or so motions for class certification. One was filed
7 in, I believe it was the end of May, and in fact, that
8 motion was put off until today's hearing. The others were
9 filed much more recently, knowing full well that the bar
10 date was upon us and that mediation was coming to a
11 conclusion.

12 The significance of the claims that are described
13 in the motions are fully understood, and there's no debate
14 about the significance of the claims, the seriousness of
15 damage, and the entitlements to recoveries, and that's not
16 what a class motion is about. What it really is about is,
17 also in looking at the Musicland factors, I don't think the
18 Court is -- I believe the Court probably understands without
19 a lot of discussion, the status of the absence of any class
20 certifications in the MDL and the prepetition litigation,
21 and the Court is well aware, I believe, of the bar date
22 order that has been put in place in this case.

23 The question, really, is what is the impact of
24 class certification motions on the administration of this
25 case, and the reason why we believed it was important for

1 these motions to go forward now and for there not to be
2 further adjournment is because the adjournment of these
3 motions will, invariably, lead to greater difficulty in
4 resolving mediation.

5 A belief that there is going to be litigation
6 that's going to take place later on in this case that is
7 going to consume more attention, that is going to create
8 uncertainty, and the need to bring this case to a
9 conclusion, I think, has been underscored, not just today,
10 but over the last several hearings. All parties recognize
11 it is time to bring this case to a conclusion, and one of
12 the ways to bring the case to a conclusion is to bring
13 motions to resolution.

14 These motions have been briefed. These are legal
15 issues. In the first instance, Courts have dealt with class
16 certifications in many other cases, and it's well
17 appreciated that class certification is unusual and,
18 particularly in the presence of a bar date order of this
19 breadth and given the fact that these motions were not
20 brought at the beginning of the case when they could have
21 been brought, but were brought literally at the eleventh-
22 and-a-half hour before the expiration of the bar date and
23 after five months of mediation, there was no benefit to this
24 case to let these motions get delayed.

25 And while it is understandably burdensome to go

1 forward with hearings, the fact of the matter is that
2 sometimes it's just necessary to get rulings on motions and
3 get the clarity. The fact that each constituency is
4 participating in the mediation, specifically has been named
5 as a mediation party, is at the table and is engaging in
6 negotiation, is of great significance to exactly how the
7 Court proceeds with these motions.

8 The timing is not a coincidence. We need to
9 conclude the mediation. These parties are participating in
10 the mediation and will participate in the plan process.
11 They sit on the Creditors Committee. There is nobody who's
12 making a motion who is not adequately and amply represented
13 by experienced and effective counsel, and each of these
14 constituencies will be filing proofs of claim on behalf of
15 hundreds and hundreds, maybe thousands of entities, each of
16 whom claim to have interest in this case.

17 We're trying as best as we can to put together an
18 abatement plan that will provide going forward benefits for
19 all constituencies and there is no reason why the abatement
20 plan cannot be put into place and negotiated and agreed to
21 regardless of the outcome of these class certification
22 motions. And to the extent we can't reach agreement, and to
23 the extent there is no consensus that is arrived at through
24 mediation, then it's the proofs of claim that will
25 ultimately have to be considered to the extent parties

1 believe that they're going to compete for the limited amount
2 of funds that will be applied to satisfy damages in this
3 case.

4 There is no need for class certification in order
5 to negotiate and agree upon a plan of reorganization that is
6 going to provide abatement benefits going forward for all of
7 the constituencies. Parties are concerned about making sure
8 that the plan is going to specifically make clear that
9 abatements funds are going to go to one constituency or
10 another and they're not going to be simply left in the
11 general revenue of the various states and the localities.

12 That issue was understood, and it is an important
13 element of what has to go into a plan, but has nothing to do
14 with the need for class certification. So, Your Honor, we
15 believe that the timing and the merits are interlinked here,
16 and we believe that we have a structure that is very mature
17 in this case and it ready now to move into a plan process
18 and to all of a sudden change the rules by which this case
19 has operated for 12 months, and to essentially inject
20 classes that do not exist today and will now be created and
21 will have to consider who is in and are there opt-outs,
22 because there are going to have to be opt-outs,
23 notwithstanding the arguments by the school districts, for
24 example, that if you certify classes under Rule 23(b)(1)(b),
25 which is a limited fund, that there are no opt-outs that, in

1 fact, is not the case.

2 The Second Circuit's made clear in Drexel that you
3 have to provide for opt-outs. You're going to have to have
4 significant litigation around exactly each class is going to
5 exist, and invariably, even if this Court decides to adjourn
6 these motions, the signal will be that others should be
7 coming in over the next several days and beyond for more
8 classes of the other different local government entities.
9 Maybe they'll be prisons. Maybe they'll be firemen. Maybe
10 they'll be policemen, each of whom will say, we suffered
11 damages, we should have a class also.

12 It's not unheard of. In fact, in Musicland, the
13 class certification motions were filed after the bar date in
14 order to be considered, and Courts looked at those, as well,
15 and so we will be burdened with more and more complexity and
16 more burden that will slow this case down and will make the
17 schedule that we talked about in connection with exclusivity
18 impossible to achieve, because of the overwhelming need of
19 new complexities that we inject.

20 So as difficult as it may be to have to confront
21 all the motions, we believe it's in the best interest of the
22 case and in the administration of the case to deal with it
23 and hopefully let us go back to mediation tomorrow and
24 continue to try to see if we can reach agreement on the
25 terms of a plan.

1 MR. HUEBNER: Your Honor, just very quickly, just
2 a new fact that I was just sent that may be helpful to the
3 Court

4 THE COURT: All right.

5 MR. HUEBNER: -- inquiry, because the Court asked
6 a specific question about factor number two. Prime Clerk,
7 just so the Court knows, has --

8 THE COURT: I think, mister -- my question may
9 have been misunderstood. I wasn't talking about factor
10 number two in the three-factor discretionary 9014 Musicland
11 analysis. I was talking about the second step in the
12 inquiry, which is, if you pass the Musicland test, you still
13 have to cover the requirements of Rule 23.

14 MR. HUEBNER: Understood. Okay. Well, then, Your
15 Honor, let me quickly tell you the fact, because it may be
16 useful in any event, and I apologize for slightly
17 mishearing.

18 THE COURT: Okay.

19 MR. HUEBNER: Just so that the Court knows,
20 obviously, at the extended bar date hearing, we obviously
21 had an unusually recent and unusually robust set of facts
22 and conversations about the extraordinary (sound drops) of
23 the bar date. I won't repeat that, because the Court knows
24 all those facts very well, including touching ever person in
25 America six times, but here's just one new fact. So far,

1 Prime Clerk, which is only one facet of Purdue's bar date
2 mechanics that relate to this second Musicland factor of
3 whether members of the punitive class receive notice of the
4 bar date, has incurred \$42.9 million in fees, which we
5 assume were appropriately spent, given what we were asked to
6 do.

7 So just so that the Court and all parties
8 understand, the cost of this bar date is, itself, larger
9 than many Chapter 11 cases that people have heard of, and we
10 believe, did its intended goal which was to reach, really,
11 virtually everyone in the country in the way that no bar
12 date has possibly ever reached them before, which is why, in
13 our view, and I won't belabor the pleadings, blowing it all
14 open now and essentially allowing a potential endless
15 procession of new bar dates with new layers of
16 administrative complexity also goes squarely to factor
17 number three.

18 But again, I only wanted to add the new fact
19 because I thought you were asking about the notice issues of
20 Musicland, too, so I apologize for mishearing, and I will
21 leave it at that and not double-team Mr. McClammy.

22 THE COURT: Okay.

23 MR. SHORE: Your Honor, this is Chris Shore from
24 White and Case. May I be heard very quickly?

25 THE COURT: Sure.

1 MR. SHORE: Thank you. On behalf of the Ad Hoc
2 Group of Personal Injury Claimants. I'll try just to focus
3 on Your Honor's question regarding adjournment and reserve
4 any arguments on the merits of the underlying motion. Let
5 me start here. Mediation, as I think you're hearing, is
6 currently a daily, not a weekly exercise, to try to see if
7 we can get to an agreed allocation. And as the Court can
8 expect, it's already hard to divide up the pie. It was hard
9 because we don't have a bar date yet. It'll get easier once
10 that comes and goes.

11 But given the size of the claims already filed
12 relative to the distributable value and given parties'
13 strong feelings about the opioid crisis in general, it's a
14 hard, hard process, which a lot of people are putting their
15 minds to. Given those factors, I do believe that one way or
16 another, we need to know how many proverbial forks can be
17 put into the pie, at this time, even more so, given Your
18 Honor's comments about the expected velocity of the
19 mediation, one way or another

20 Are we going to have giant class groups of claims,
21 in which case, there will be additional parties to satisfy
22 out of the mediation process or will we not? So, whether or
23 not Your Honor feels you have sufficient -- a sufficient
24 record to definitively rule on the motion today, even
25 guidance as to whether the Court is inclined to exercise its

1 discretion to invoke 7023 or not, I think, is just going to
2 be helpful to allow us to keep the velocity up in the
3 mediation.

4 THE COURT: Okay, thanks.

5 MR. MACLAY: Your Honor, could I be heard? This
6 is Kevin MacLay for the MSGE Group.

7 THE COURT: The -- yes.

8 MR. MACLAY: Thank you, Your Honor. We're one of
9 the public claimants who filed the objections, along with
10 the MCSG and the Ad Hoc Committee, and one of the things I
11 would like to reference in respect to Your Honor's question
12 about the potential for this Court's inability, today, to
13 get into the Rule 23 factors, is the point that the movants
14 have the burden and they have had the opportunity to present
15 to Your Honor and to the other parties whatever evidence
16 they thought was necessary.

17 And, of course, at least one of them, the public
18 school districts, on Page 4, Footnote 4 of their brief --
19 Page 4 of their brief with Footnote 4 attached, make the
20 point that the public schools' motion, like many class
21 motions, can resolve without one, the one referring to an
22 evidentiary hearing.

23 So, from my perspective, Your Honor, from the MSGE
24 Group's perspective, to the extent someone had an
25 evidentiary burden that they have failed to meet, that does

1 not necessarily suggest adjournment is appropriate. It
2 could also suggest a denial of a motion would be
3 appropriate. And the fundamental important point here, as a
4 practical matter, as you've already heard from Mr. Eckstein,
5 is to the extent we're aiming to an end of August of
6 conclusion to the mediation, that mediation is
7 extraordinarily complex, has a lot of parties.

8 My group, as are the other governmental entity
9 groups, has been involved, for example, this last Monday, in
10 five different mediation sessions in one day. So it is
11 extraordinarily complicated with a lot of moving parts, and
12 the idea that this uncertainty could be allowed to continue
13 to exist about whether or not these various movants have
14 viable class proofs of claim will inject uncertainty into
15 that mediation and will make the conclusion of it by the end
16 of August a much more difficult objective to achieve, and I
17 agree with Your Honor that that is an important objective to
18 try to achieve.

19 It will be difficult, but it's an important thing
20 to try to do. And so, as we try to work together here in
21 the mediation, all the various parties who are involved here
22 are all involved in the mediation. I think, having fewer
23 open issues rather than more would be quite helpful and
24 important, and so that is the MSGE Group's position, Your
25 Honor.

1 THE COURT: Okay, thank you. All right. We're
2 back to you then, Mr. Preis?

3 MR. PREIS: Sure. Thank you, Your Honor. Again,
4 for the record, Arik Price from Akin, Gump, Strauss, Hauer,
5 and Feld on behalf of the Creditors Committee. I'm not sure
6 exactly where to begin, because there's a lot just said,
7 some of which was a little bit surprising and some of which
8 was just wrong. But I do want to just hit on a few things
9 and then I'll get to the main points I want to make.

10 I want to clarify one thing, just so there's no
11 confusion. Mr. Eckstein twice said that all the movants are
12 members of the Committee or ex officio. That's actually not
13 true. Two of them definitely are not, of the five that
14 remain. Second, I've heard from -- I think we heard from
15 the Debtors or the states or the MSGE Group or Mr. Shore
16 about the parade of horrors that may happen if you do not
17 adjourn the motion today.

18 We've heard that parade of horrors in the past
19 when the public schools were added to the mediation pursuant
20 to stipulation and that actually not -- did not end up
21 happening. Also, the proposed form of order that we had put
22 forth, actually would, frankly, cut off that parade of
23 horrors. So, I don't know that that's really an issue.

24 The third thing, both the Debtors and Mr. Eckstein
25 seem to be focused on case timing, as were you, Your Honor,

1 at the beginning of this hearing. You spent the first hour
2 talking about case timing. You were pretty clear, I
3 thought, that you want mediation to be working to a
4 conclusion of one month. I'm not sure that adjourning the
5 hearing today is going to affect that timing. In fact, I'm
6 relatively certain it's not going to affect that timing.

7 Fourth, I thought that it would be helpful, Your
8 Honor, Mr. Shore seems to point out that it would be useful
9 for Your Honor to at least give your views about all of
10 these motions without actually ruling. I guess, that's
11 exactly what the Committee was afraid of. Again, we take no
12 view as to whether the motions should be granted or not.
13 We've analyzed and we understand the arguments on both
14 sides, but it is precisely, for example, what Mr. Shore
15 said, which is that you would give your view, even not as a
16 ruling, as to why we wanted these motions adjourned.

17 With that, Your Honor, I want to turn to a few
18 critical points that I believe bear emphasizing. You have
19 our response, as you said you have read it. I'm not going
20 to repeat what's in it. Our argument is fairly
21 straightforward and not extraordinary. But as we said in
22 our papers, the scope of the mediation was carefully
23 constructed. It's been extant for almost 150 days. And as
24 you just heard, mediation parties as well you, as do we,
25 hope it's nearing its end.

1 We believe and continue to believe that all the
2 issues subject to mediation order should be discussed in
3 mediation before they're litigated. Nothing has changed
4 that. I therefore -- I just want to make seven kind of
5 quick points.

6 First, as I said earlier with regard to what Mr.
7 Shore said, our main issue with going forward today, is not
8 concern over who wins or loses, but it's the impact that the
9 hearing itself has on the mediation. We understand that if
10 no mediative resolution can be achieved, then parties will
11 need to litigate these issues and you will need to make a
12 determination. Rather, we have two concerns.

13 First, the mere fact that certain parties are
14 being forced, today, to defend their claims in an open and
15 litigated forum, whereas other parties, mainly the
16 objectors, will not, when all parties had certain
17 expectations about the process and timing -- and I'm going
18 to get to that in a second -- is unfair as a procedural
19 matter and interferes with the mediation. We've already
20 seen and you've already, actually now, in some of these
21 arguments, you've started to hear objecting parties taking
22 free shots at the movant's claims, without being subjected
23 to similar arguments against their own claim.

24 The objectors raise very specific issues regarding
25 strength and weaknesses of the movant's claims in their

1 papers. Presumably, they're well aware that those arguments
2 could just as easily be turned against them, but they can
3 take comfort that due to the circumstances of these cases,
4 their claims are not before the Court. Those circumstances,
5 which include the COVID-19 and include the upcoming bar date
6 would create an uneven playing field if the motions were to
7 go forward today.

8 Our second concern is, frankly, exactly what Mr.
9 Shore said, which is, we're aware that just having a hearing
10 regarding the relative strength and weaknesses of only
11 certain parties' claims is going to put the parties in an
12 unfair position. The movants are going to be forced to
13 defend their claims, and without telling Your Honor how to
14 do your job, because obviously that is not my intention, I'm
15 sure you understand the awesome weight your words have.

16 We, being who we are, the parties in this case
17 being who we are, even if you don't make a determination in
18 respect to any motion, parties in the mediation listen to,
19 scrutinize, debate, and agonize over Your Honor's
20 commentary. As such, any public hearing regarding the metis
21 of the mediation parties' claims will upset the delicate
22 balance of mediation and interfere with what I think Mr.
23 Eckstein was saying, the multi -- or, Mr. Troop -- the
24 multifaceted, multiconnected, multipronged mediation issues
25 that are being discussed.

1 The second point I want to make, and it's one that
2 we didn't exactly make in our papers, but it became clear to
3 us over the last week. A lot of people say their goal in
4 mediation is to reach a deal. We've heard Your Honor's
5 admonition, both in the past and today, specifically even an
6 hour ago, that the deal doesn't have to be perfect. We
7 agree, but that being said, one of our roles here is to
8 ensure that the mediation process is fair and appropriate
9 and that all parties negotiate in good faith.

10 And when asked, and even sometimes when not asked,
11 we weigh in if we think it's necessary for the good of the
12 process. Part of that process is ensuring that issues that
13 are subject to mediation are not litigated while mediation
14 is ongoing. We stated in our brief, and as we said, we've
15 pushed parties not to bring claims against other mediation
16 parties while mediation is pending. And in respect to
17 several motions in other matters in these cases, which I'm
18 sure you're aware of, we've taken the position that such
19 motions or issues should be dealt with in mediation and not
20 elsewhere.

21 Indeed, like Mr. Shore has put in a pleading,
22 saying he would want to go forward with claims of -- issues
23 of claim subordination. We've heard people talk about claim
24 allowance, claim estimation, and other similar matters.
25 People could've brought those motions during the last five

1 months, all of which would've interfered with mediation.
2 And so, we pushed, and perhaps others have as well, for
3 parties not to bring litigation respect to such issues until
4 it's necessary to do so because mediation failed.

5 I'll just end by saying we worked hard during this
6 mediation on this point to try to ensure that these
7 principles are adhered to, and to our request for an
8 adjournment, we're continuing to do so.

9 The third point I want to make is how central the
10 class proof of claim motions are to mediation. The issues
11 of claims size, claim amount, and strength and weakness of
12 claims are basically the most elementary building block to
13 an allocation settlement. The whole reason we're engaged in
14 mediation is to determine the appropriate split of the value
15 of the estate between the private and the public side.

16 Litigating the class proof of claims in the middle
17 of mediation would be akin to litigating the issues I just
18 mentioned earlier, that we've tried to talk people out of
19 litigating. It's undeniable that we're in mediation,
20 precisely to avoid litigation of these issues. Indeed, we
21 kind of find it instructive that the centrality of this
22 issue as to mediation by the fact that 12 different groups
23 comprising 14 different parties filed 25 separate pleadings
24 totaling more than 3,100 pages of briefing on just this
25 issue.

1 In fact, in these Chapter 11 cases, I believe only
2 the preliminary injunction motion over 10 months ago
3 garnered as much briefing from as many parties. Perhaps,
4 that's an indication of how truly central these issues are
5 to mediation and a reason to adjourn any decision on the
6 motions to allow mediation to settle them.

7 Fourth, I want to, as I mentioned earlier, to
8 respond to some things that Mr. McClammy and Mr. Eckstein
9 said, there seemed to be some refrain about the timing of
10 these motions. To be clear, the parties bringing the class
11 proofs of claim motions, by and large, expected and continue
12 to expect, as we, too, expected and continue to expect, that
13 issues of how to ensure that large groups of legitimate
14 claimants receive a recovery in this case would be addressed
15 in mediation.

16 This is not a public versus private issue. It's
17 the reality of a mass tort bankruptcy case such as this,
18 which everyone here has acknowledged, is one of a kind. One
19 of the primary, if not the most important, ways in which
20 these cases are unique relates to the sheer number of
21 victims and parties involved. A mechanic is going to be
22 needed to work out in mediation to ensure that all
23 legitimate creditors have the opportunity, in a sensible
24 way, to receive proceeds.

25 Parties in the mediation can have different views

1 as to the right way for this to occur, but this has been an
2 issue since the beginning of mediation. The fact that we're
3 having the hearing one week before the bar date is not a
4 product of the claimants or movants waiting until the
5 eleventh hour to file a motion, but rather, the fact that
6 this issue has been part of the mediation since the outset
7 and the movants cautiously did not want to raise these
8 issues in litigation if they did not need to.

9 Indeed, if it were not for the pandemic, both its
10 direct effect on how mediation is conducted through phone
11 calls and Zoom instead of in-person meetings, and its
12 indirect effect on the time and attention of our esteemed
13 and important public servants who have played a major role
14 in this case and the mediation, I think it's fair to say
15 that many of us expect that we would've achieved a mediated
16 settlement on these issues by now, or perhaps, a declared
17 failure.

18 The only reason that the movants needed to file
19 these motions is that we are not done and the bar date is
20 one week away.

21 Fifth, we understand that some parties may argue
22 that they had always thought the class proof of claim issue
23 would be resolved in litigation, not mediation. I think
24 that's what Mr. Eckstein may have been getting at, although
25 I'm not sure. This position ignores the centrality of the

1 issues which I mentioned earlier, but it also ignores the
2 mediation order. The mediation order expressly identified
3 as mediation parties certain Ad Hoc Groups of creditors.

4 The subject matter of the mediation relates not to
5 the allocation of value solely among those groups, but
6 rather the allocation of value between "the nonfederal
7 public claimants on the one hand and the private claimants
8 on the other." These two broad classes are not defined to
9 be only the Ad Hoc Groups. Instead, the terms are to refer
10 to broad constituencies that extend far beyond those sitting
11 around a mediation table.

12 For instance, the mediation order actually
13 includes by name the NAS Medical Monitoring Class as a
14 private claimant on the side of the private claimants.
15 Private side claimants also include, by name, hospitals and
16 rate payors. Private side claimants are not defined, as I
17 said, as only the clients represented by mediation parties.
18 Same thing with the public side claimants. Indeed, it would
19 be nonsensical for a mass tort mediation such as this that
20 has claimants across the entire spectrum, because by their
21 very nature, this case requires mechanics to address the
22 mass number of torts that have occurred.

23 That being said, of course, parties can take issue
24 with the contemplated allocation of specific groups. If
25 they want to take the position that claimants in a certain

1 category of creditors should get no recovery or not a
2 recovery consistent with a certified class, for example, or
3 to ensure that -- just to pick on the hospitals -- value
4 only goes to 800 hospitals as opposed to 5,000 hospitals,
5 that's okay.

6 That's their prerogative to negotiate in mediation
7 and the mediation will either fail or succeed. But it's not
8 appropriate to force the Court to rule on that issue during
9 mediation. To be clear, we're not suggesting that the
10 mediation order definitively determine the issue underlying
11 the class claims motion. Instead, any party that has
12 concerns or questions regarding the representative nature of
13 some of the mediation parties should have raise such issues
14 in connection with drafting the mediation order or over the
15 past 140 days, not as such process is basically coming to an
16 end.

17 Everybody knew of this issue at the beginning in
18 mediation. We discussed it. Again, without getting into
19 the mediation privilege, but I assure you, it was discussed
20 during the negotiation of the mediation order, just as the
21 parties knew that hundreds of other issues, all of -- yet,
22 all agreed that like all those issues, they'd all be part of
23 mediation.

24 Six, we found it rather surprising that not one
25 objecting party thought it important to mention the issues

1 underlying the class proof of claim motions were part of
2 mediation. I think you heard, Your Honor, that some parties
3 think that engaging in mediation during preexisting
4 litigation is a way to move the mediation forward. In other
5 words, we should litigate while the mediation is moving
6 forward.

7 I suppose that's a fair point, in certain cases,
8 but not here. In cases where we've been a part of that that
9 occurs, in other words, where you allow litigation during
10 mediation, there's some sort of live dispute or adversary
11 proceeding that cannot get resolved, so the Court orders the
12 parties to mediation or they agree voluntarily. During
13 mediation, the parties may or may not continue the
14 litigation, the preexisting schedule, because if mediation
15 doesn't result in a settlement, the parties need to be
16 prepared to litigate.

17 Or the parties may all agree that during
18 mediation, it's important to have a decision on a minor
19 issue related to mediation, but not on the key issue at play
20 in mediation. Here, we have no such live controversy prior
21 to the start of mediation, and moreover, having a hearing on
22 a class proof of claim motion will give some parties a
23 completely unfair advantage in the mediation, because they
24 get a free shot at the merits, size, and amount of the
25 claims of others, which is, effectively, the central part of

1 this mediation.

2 THE COURT: Okay, I think you're repeating
3 yourself at this point, Mr. Preis.

4 MR. PREIS: Sir, I -- the only -- I was actually
5 coming to an end. The only thing --

6 THE COURT: Okay.

7 MR. PREIS: -- I wanted to say at the very end is,
8 we did propose a manner in which the mediation parties and
9 all the parties to the motions would not be prejudiced by
10 adjourning these various motions and we would respectfully
11 request that that sort of adjournment, consistent with your
12 remarks about an hour ago, be approved here.

13 THE COURT: Okay.

14 MR. HUEBNER: Your Honor, given the length of that
15 "response," may I just say four quick things?

16 THE COURT: Okay, but that should be the end of
17 it, the argument on this point, I think.

18 MR. HUEBNER: It will be, Your Honor. I mean, to
19 be clear, that was not a response. That was a full oral
20 argument and it would've been nice if we heard that first,
21 so that we could've then responded. So, a -- just four
22 quick things. Number one, there's a lot Mr. Preis said that
23 is just very not correct.

24 Nobody on our side, certainly the Debtors who want
25 this case treated fairly and efficiently and moved along,

1 has asked the Court to form any view on the merits of the
2 claims. There are Musicland factors and there are three of
3 them, and the movants are seeking extraordinary relief that
4 is in the discretion of the Court that we believe is
5 absolutely clear that they go oh-for-three, down the line,
6 on the three factors. We're not asking for any ruling on
7 the merits of the claim.

8 Number two, we do not agree with Mr. Preis at all
9 about what is good for mediation and likely to advance
10 mediation and the occasionally -- and I try to do it
11 sometimes, too -- people try to claim the mantle of, they
12 speak for a great number of people. I just want to be very
13 clear as the fiduciary for all in this case, we opposed
14 these motions and did not agree to the adjournment proposal
15 because we think it is not in the best interest of this case
16 and will blow open a Pandora's box that a change in
17 circumstance that the movants are seeking on motions where
18 it is their burden that has been unsatisfied by a country
19 mile.

20 Three, Mr. Preis has said, repeatedly, this is one
21 of the issues being mediated. I do not agree with that at
22 all. I don't want to call it sleight of hand, but I think
23 it is just false, and maybe we just see it differently and
24 maybe that's okay, but to be clear, the mediation is on the
25 intercreditor allocation, primarily public versus private,

1 and I'm quite confident I know the mediators' views on these
2 topics, but it's not for me to say.

3 But our view is that whether or not these five,
4 essentially, class action law firms can blast open our bar
5 date that cost, God knows how many tens of millions of
6 dollars, and begin a whole new cycle of administration and
7 claims harvesting, is not something that I believe is being
8 mediated at all.

9 And the last issue, I'm going to actually just
10 pass on, to limit it to three, for the sake of brevity. But
11 there was sort of a notion in the remarks that people are
12 briefly gunning for the private side in the middle of
13 mediation and that makes the playing field asymmetrical.
14 You can read the Debtors' pleading as many times as you
15 want, and you will not find that. That is not our view.

16 As fiduciary for all, given how far we've come at
17 the bar date and the extended bar date, we think that this
18 extraordinary relief comfortably fails on the merits and
19 satisfied none of the relevant factors, and we do not
20 believe it will harm mediation. We think it will accelerate
21 these cases and we think it will be impossible to complete
22 these cases on a schedule anything like what the Court laid
23 out, and I'm leaving aside the notion of administration that
24 will now have to happen with new classes and subclasses and
25 class action lawyers and endless new sets of fees and all

1 those things, because it's laid out --

2 THE COURT: Is that --

3 MR. HUEBNER: -- in various people's papers.

4 THE COURT: But that's only if I would grant the
5 motions or some of them, any of them, if they were renewed.
6 Right? An adjournment just preserves the issue. It doesn't
7 start the litigation going.

8 MR. HUEBNER: That's correct, Your Honor, and then
9 you get back to the core question of, is adjournment as
10 opposed to a ruling very good for the case or very bad for
11 the case, in terms of (sound drops) and parties are allowed
12 to disagree and we and the Creditors Committee have agreed
13 on a great many things in this case. We don't agree on this
14 one. Based on everything we know and many sophisticated
15 conversations, we believe that mediation will be advanced
16 and the case will be accelerated and parties will be treated
17 fairly if the ruling that we believe is the right one comes
18 down today.

19 But if it comes down in four weeks, so be it, but
20 our view is that today is better.

21 THE COURT: Okay.

22 MR. TROOP: Your Honor, this is Andrew Troop. I
23 apologize, but Mr. Preis did quote me. And I need to
24 address at least one factual issue, that I am just confused
25 by, so I'll just say it straight out. The issue of class

1 claims, to my knowledge, and to the knowledge of everyone
2 who has emailed me since the statement was made, was not a
3 subject of conversation, discussion, or the mediation.

4 What is true, as Mr. Eckstein reported earlier is
5 that the public claimants are focused on an abatement regime
6 that will benefit all. Implicit in that is that parties who
7 don't file claims may, nonetheless, benefit from the
8 abatement program; that's true, Your Honor, but as I recall,
9 back at the hearing on the bar date, when you and I had a
10 colloquy about the need for a bar date, the point was made
11 that we need a bar date, primarily so that people can
12 understand what might happen if there isn't a negotiated
13 resolution in this case.

14 That question has been put into play by the
15 motions and a ruling on the motions will provide clarity,
16 and clarity will help the process move along, whether that's
17 approving the motions or denying them, Your Honor. That,
18 and as a result, the risk that is being undertaken by the
19 objectors to the motions in insisting that it goes forward,
20 is the flipside of the risk that Mr. Preis articulates the
21 movants have, if you should rule on the motions and deny
22 them.

23 But either way, Your Honor, it provides clarity
24 and for the reasons Mr. Huebner said and others, we would
25 advocate you not adjourn the hearing and that we reach the

1 merits of the motions. Thank you, Your Honor.

2 THE COURT: Okay. As the parties all know, I
3 have, at this point, although there's a request to hear the
4 last one on the shortened notice, five motions before me for
5 class certification for the purpose of filing class proofs
6 of claim in these Chapter 11 cases: the public school
7 districts' motion, the hospitals' motion, the private
8 insurance plaintiffs, the rate payors' motion, the NAS
9 Guardians' motion, and what I've been referring to as the
10 West Virginia NAS motion.

11 The current motion before me is couched in a
12 response by the Official Unsecured Committee -- I'm sorry,
13 the Official Committee of Unsecured Creditors, which seeks
14 an adjournment of the hearing on the request for class
15 certification by each of the movants until after the
16 termination of the pending mediation of allocation issues as
17 between public and private claimants in these cases.

18 The movants all have, importantly, agreed to that
19 adjournment and the entry of the order attached to the
20 Creditors Committee's request for an adjournment, but some
21 of the objectors, or all of the objectors, have not agreed
22 to the adjournment, which at one level, is understandable,
23 although, at another level, particularly given the terms of
24 the order, may not be.

25 The Creditors Committee has a point that one

1 normally does not litigate issues pertaining to the merits
2 of claims that are the subject of mediation. Because of the
3 pendency of the bar date, these five motions have filed. If
4 the mediation had concluded before now, as originally
5 contemplated, before COVID-19 stuck us, the issues raised in
6 the class claim motions would not have come before the
7 Court, just as many issues that are not time sensitive going
8 to the merits of other participants in the mediation have
9 not come before the Court.

10 So, at one level, it does appear to me that the
11 objection to the adjournment request is opportunistic. The
12 Debtors say it's opportunistic in a good way. It clears
13 away an issue that could otherwise raise its head. I think,
14 more candidly, the -- some of the other objectors have
15 basically said this will assist the mediation because we
16 will know that we're dealing with a pool of claims limited
17 to those that are actually filed, and not class claims, if I
18 were to grant the motion -- I'm sorry, if I were to grant
19 their opposition to the adjournment and then deny the
20 respective motions.

21 A legitimate concern by the objectors is that the
22 bar date in these cases would be subverted by leaving the
23 five pending motions open for determination, if necessary,
24 after the conclusion of the mediation. The Debtors have
25 spent a substantial amount of time and money in developing

1 and implementing a comprehensive set of notice procedures
2 for their bar date.

3 The Courts have long recognized that "One of the
4 troubling aspects of a class claim is that, at some level,
5 it subverts the bar date which is why it is always a
6 consideration, i.e., was there proper notice or effective
7 notice in the so-called Musicland analysis."

8 I will note, however, that the proposed order that
9 would be agreed by the parties supporting the adjournment
10 provides that notwithstanding the adjournment and the
11 preservation of all rights as of today, if these motions or
12 any of them come back on the calendar, notwithstanding the
13 foregoing, the pendency or denial of the class claim motion
14 shall not be deemed to toll -- T-O-L-L -- the general bar
15 date with respect to any individual proof of claim, whether
16 or not such individual proof of claim asserts a claim that
17 would have been encompassed when encompassed by a class
18 proof of claim filed pursuant to the preceding paragraph.

19 In my mind, in preparing for this, that provision
20 is an extremely important fact. The law remains unclear
21 regarding tolling in the bar date context, without that
22 clarification, and I agree with those who are objecting to
23 the adjournment request, that a major reason to opposed it
24 would be concerns regarding vitiation of the bar date.

25 As I'm sure they're aware, there are cases at the

1 Circuit level, although not in the Second Circuit, and in
2 the Southern District, that either indicta or under
3 different facts, refer to tolling. May well be that I would
4 not follow those cases in these circumstances, but it is a
5 highly open issue and clearly, open still in my mind.

6 The paragraph that I just read with the addition
7 of language that would provide that it would be the pendency
8 or denial of a class claim motion or any other motion of a
9 similar kind or nature would not toll, to me, narrows the
10 issue down considerably, which is, are the benefits of
11 having some clarity on the class claim issue with respect to
12 each of these five motions, outweighed by the need to have
13 the mediation proceed on what I believe would be a more
14 level playing field where all issues implicating claims
15 would be preserved.

16 The parties, themselves, could evaluate their
17 merits. They certainly spend enough time briefing this
18 issue so that they could consider those issues in the
19 context of a mediation. I, frankly, do not believe that the
20 adjournment request on the terms of the order offered up by
21 the Committee unduly prejudices the Debtors or the
22 objectors. The matter is fully briefed. If there is an
23 agreement in the mediation, I'll be able to rule very
24 promptly on these issues in the exercise of my discretion in
25 the first prong of the analysis and, frankly, with regard to

1 most, if not all, of the other -- of the movants on the
2 second prong, namely the Rule 23 factors.

3 I'll certainly be able to rule on all of those
4 issues well before any further plan negotiations that are
5 not resolved by the mediation. The only other factor that I
6 believe would be unduly unfair, is if other parties jumped
7 in now, after today's hearing, and frankly, although this
8 does not need to be in the order, I would view that as being
9 too late.

10 MR. FARRELL: Sir --

11 THE COURT: Excuse me. I do not believe that the
12 adjournment will open up any sort of floodgate going
13 forward. So, I'm not ruling on that point, but that's my
14 strong inclination. It doesn't need to be in the order, but
15 that's simply a fact that people have to consider if they
16 want to spend the time making the motion. So all things
17 considered, I believe that these parties are able, fully --
18 all of the parties -- the movants, the Committee, the
19 objectors, including the Debtor, are fully able to deal with
20 all of these issues in the mediation, that they are all, in
21 fact, engaged in the mediation, and that they all are
22 discussing the merits of the claims, and as importantly, I
23 assume -- and I assume this in part because the mediators
24 are so experienced and so talented -- they're engaging in a
25 mediation that can be a win-win type of mediation outcome,

1 which might well obviate the need for any consideration of
2 this motion, ever. In any event, I would rather consider it
3 in the light of the facts after the conclusion of the
4 mediation and not before.

5 So, I will grant the Committee's request and enter
6 an order consistent with the order that they attached to
7 their request, with that one change which would provide for
8 no tolling as to anyone else that might file a claim on a
9 class basis between now and the bar date.

10 MR. FARRELL: Sir, may I speak? It is Mathew
11 Farrell calling from Canada, representing the City of Grand
12 Prairie, which is recently filed a class claim on behalf of
13 Canadian cities, which I believe, with your change, I'm not
14 sure whether that affects our interests.

15 THE COURT: Well, I'm not hearing it today and I
16 told you, there's no change in the order that would cover
17 you, except for the tolling point.

18 MR. FARRELL: Right.

19 THE COURT: And I am prepared to rule today in
20 favor of the no-tolling point, based on the facts as
21 distinguished here where there was an extensive claims bar
22 date negotiated heavily with substantial notice and
23 opportunity to object and no objection, and --

24 MR. FARRELL: Yes, sir. My --

25 THE COURT: -- the like. So -- and plus which,

1 the other movants have agreed to an adjournment on that
2 basis.

3 MR. FARRELL: Yes, sir. I --

4 THE COURT: I don't believe, in applying the
5 discretionary factors under Rule 9014, that tolling would be
6 appropriate here.

7 MR. FARRELL: Yes, sir. My --

8 THE COURT: -- who clearly could act on their own,
9 being aware of the bankruptcy case, so --

10 MR. FARRELL: Yes, sir. But --

11 THE COURT: -- any doubt about that.

12 MR. FARRELL: So, just so that I'm clear, sir, my
13 question was, prior to the bar date, a claim is filed with
14 respect to this class action. Your order is not going to
15 affect the ability of that class to seek certification for
16 the purposes of settlement, as some later time?

17 THE COURT: For the purposes of settlement?
18 That's one of the reasons that I'm -- that's one of the
19 reasons that I'm adjourning this matter.

20 MR. FARRELL: Right.

21 THE COURT: You can have a class for settlement
22 purposes and for non-settlement purposes and --

23 MR. ECKSTEIN: Your Honor --

24 THE COURT: -- where we are --

25 MR. ECKSTEIN: Your Honor --

1 THE COURT: -- mediation. But I'm not ruling on
2 this issue. I'm not ruling on this issue, except as far as
3 tolling. There will be no tolling here.

4 MR. FARRELL: Excellent. That's all --

5 THE COURT: -- the only effect of the order.

6 MR. FARRELL: Thank you, sir.

7 THE COURT: Okay.

8 MR. ECKSTEIN: Your Honor, this is Kenneth
9 Eckstein. Can I just -- to make sure that the record is
10 clear and that the press, when they pick this up, is not
11 confused. As I understand -- and I don't mean to put words
12 in Your Honor's mouth -- but as I understand what Your Honor
13 is saying today, Your Honor is agreeing that the motions
14 with respect to class certification are being adjourned and
15 I understand that there is no date right now -- there's no
16 adjourn date, they're just being adjourned?

17 THE COURT: They're being adjourned -- well,
18 again, it's under the terms of the order attached, the
19 proposed order attached to the Trustee's request, which says
20 a first possible hearing date that is at least three days
21 after the termination date under the mediation order. That
22 will be governed further by the case management order, so
23 clearly, I could hear them very quickly after -- I can hear
24 these, I can resume with this hearing very quickly
25 afterwards, if that makes sense.

1 MR. ECKSTEIN: I appreciate that.

2 THE COURT: There's no specific date. You're
3 right about that, Mr. Eckstein.

4 MR. ECKSTEIN: Right. The other point, though,
5 that I felt was important, was that, as I understand it,
6 Your Honor is not modifying the bar date order --

7 THE COURT: Absolutely not.

8 MR. ECKSTEIN: -- obligations and filed claims
9 aren't clear. The bar date is July 30th and everybody,
10 everybody needs to respect that date and what may happen in
11 the future, people are at risk, whatever they choose to do,
12 but if they don't file claims by the bar date, people have
13 to understand that the bar date will have passed and --

14 THE COURT: Right.

15 MR. ECKSTEIN: -- I think that was a clarification
16 I thought the record --

17 THE COURT: That is --

18 MR. ECKSTEIN: -- reflect that.

19 THE COURT: That is a very important --

20 MR. ECKSTEIN: -- claimants --

21 THE COURT: That's a very important point, Mr.
22 Eckstein. People who are not bankruptcy lawyers might not
23 have appreciated what I was saying, but you're absolutely
24 right. The bar date is not being modified here, and indeed,
25 Paragraph 3 of the order makes it clear that notwithstanding

1 the pendency or denial of the class claim motions or any
2 similar motion, the bar date will not be tolled, will not be
3 extended.

4 And I believe that, A, that's agreed by the
5 parties who've agreed -- sought the adjournment, and B, for
6 those who might file a claim between -- a class claim in the
7 future or that is not teed up for a hearing today, that the
8 bar date here is of such a nature with such wide notice of
9 the motion for approval of the bar date, preceded by
10 negotiation of that motion, and its importance to the
11 bankruptcy case, that this case is distinguishable from the
12 facts in In RE: Connaught Group and MF Global, both of
13 which involved a small group of parties who basically had
14 both pre- and post-petition claims, and the dicta in Gentry
15 v. Siegel and In RE: TWL Corp., both of which really were
16 dicta, and didn't really focus on the importance of a bar
17 date beyond the statute of limitations.

18 A bar date, unlike a statute of limitations, is
19 not just for the benefit of the defendant, but is for the
20 benefit of all the parties in a case. And so, under these
21 circumstances, I'm comfortable in my modification of
22 Paragraph 3 of Mr. Preis' order to make it clear that there
23 is no tolling for any purposes with regard to not only the
24 adjourned class claim motions, but any class claim filed on
25 a going forward basis or that wasn't teed up before me for a

1 hearing.

2 So, I've been, I hope, very careful in not stating
3 my view on the merits of these motions, except on that one
4 point, the tolling point, and I won't. The parties are well
5 represented. I think they know the merits of their case
6 and/or their objection, and to the extent it's relative to
7 the mediation, they should take that into account. I hope,
8 in most cases if not all, maybe all, it'll become a moot
9 point.

10 Again, I'm urging all of the parties, including
11 the five movants here, to put their best foot forward to
12 resolve their issues consensually in the mediation. That's
13 your best chance of getting what you want, at least close to
14 what you want, or what is fair as to what you want, before I
15 have to start ruling on things.

16 So, Mr. Preis, I'll ask you to make that one
17 change that I made to Paragraph 3 of the order and you don't
18 have to formally settle it. You should -- when you email it
19 to chambers, copy the parties who filed pleadings on the
20 five motions.

21 MR. PREIS: Thank you, Your Honor. We will do
22 that.

23 THE COURT: Okay. Thank you very much.

24 MR. HUEBNER: Your Honor, I don't think we have
25 anything else on the agenda. I guess I'd just like to thank

1 all parties for staying with us through what turned out to
2 be a rather long and involved hearing. I do think it
3 probably is worth closing with the fact that I do think that
4 everyone on the phone has a shared goal, which is to get the
5 right amount of value out to the world to do good as soon as
6 can. Obviously, there are not always agreements on how to
7 best achieve that goal, despite people being all of good
8 faith and the like, but hopefully, we will all recalibrate
9 where we need to, reorient where we need to, reprioritize
10 where we need to, with the shared goal of getting money into
11 the hands of those who, in many cases, very desperately need
12 it. Thank you, as always, Your Honor, for your
13 extraordinary --

14 THE COURT: Okay.

15 MR. HUEBNER: -- and assistance, and we will see
16 you, I guess, in about a month.

17 THE COURT: All right. Thank you. and again,
18 ultimately here, the Debtors do have the power to seek a
19 settlement, a settlement and a plan. I'm not requiring
20 absolute consensus. It's in everyone's interest to have
21 absolute consensus, and they should be working to that for
22 their own self-interest. It's not good in a bankruptcy case
23 to be the one outside looking in, but I won't hesitate to
24 move ahead, if we don't have absolute consensus.

25 MR. HUEBNER: Thank you, Your Honor. We

1 understand.

2 THE COURT: Thanks very much to everyone.

3 (Whereupon these proceedings were concluded at

4 0:00 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

A handwritten signature in dark ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: July 27, 2020

[& - 31st]

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